JAN 22 1957
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# In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 702

KEITH L. MANION, *et al.*,

*Petitioners,*

vs.

KANSAS CITY TERMINAL RAILWAY COMPANY,
a corporation,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI

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## PETITION FOR WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI

Petitioners (defendants in the trial court) are Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., sued individually and as representatives of the Brotherhood of Locomotive Firemen and Enginemen, of its Roanoke Lodge No. 692, and of a class of Kansas City Terminal's employees consisting of 76 persons employed as locomotive engineers, firemen, hostlers and hostler helpers. Petitioners pray that a writ of certiorari issue to review the judgment of the Kansas City Court of Appeals of the State of Missouri entered in the above case on November 5, 1956.

### CITATIONS TO OPINIONS BELOW

The petitioners appealed from the judgment of the Circuit Court of Jackson County, Missouri, to the Supreme Court of Missouri, but the Supreme Court transferred the case on jurisdictional grounds to the Kansas City Court of

Appeals, with the records and briefs then before it. An accompanying opinion by the Supreme Court is reported in 290 S. W. 2d 63, and is also printed in Appendix B, pages 56 to 69. The opinion of the Kansas City Court of Appeals (not reported) is printed in Appendix A, pages 1 to 15. The Supreme Court of the State of Missouri declined to review the decision of the Kansas City Court of Appeals. See page 16, Appendix A.

## JURISDICTION

The judgment of the Kansas City Court of Appeals was entered on November 5, 1956. A timely motion for rehearing or for transfer to the Supreme Court of Missouri was filed on November 20, 1956 and was denied on December 13, 1956. An application to transfer the case to the Supreme Court of Missouri was filed with the Supreme Court on January 7, 1957. This application was denied by the Supreme Court of Missouri on January 14, 1957. The decision of the Kansas City Court of Appeals, therefore, is the decision of the highest court of the State of Missouri from which a decision can be obtained in this case. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257(3).

## QUESTIONS PRESENTED

1. Did the Congress, when enacting the 1934 amendments to the Railway Labor Act, take from railway employees the right to strike when dissatisfied because of an accumulation of grievances resulting from their employer's wrongful interpretation and application of a collective bargaining agreement?

2. Does the Railway Labor Act prohibit strikes over grievances that result from the interpretation and appli-

cation of collective agreements, after the parties have made an effort to settle the dispute by direct negotiation and neither party has submitted the dispute to the National Railroad Adjustment Board for decision?

3. Does the jurisdiction of the National Mediation Board extend to the mediation of a dispute growing out of the interpretation and application of a collective agreement when such dispute creates a labor emergency that threatens to interrupt the operations of a carrier engaged in interstate commerce?

4. May an employer lawfully refuse to confer with the representatives of its employees in an attempt to settle a dispute resulting from the employer's interpretation and application of a collective agreement when the National Mediation Board has proffered its services after the dispute threatens to create a labor emergency and the Board has requested the parties to the dispute to meet and to bargain?

5. May a state court lawfully issue an injunction enjoining railway employees from engaging in a threatened strike over grievances resulting from the interpretation and application of a collective agreement when the National Mediation Board has proffered its services because it has found a labor emergency exists and the Board has not exhausted its responsibility under the Railway Labor Act for settlement of the dispute?

## STATUTES INVOLVED

The statutory law involved is the Railway Labor Act (45 U. S. C. Secs. 151-163), the pertinent portions of which are printed in Appendix A at pages 16 to 30.

## STATEMENT OF THE CASE

Prior to the institution of the present suit on March 26, 1954, by the Kansas City Terminal against its engineers, firemen, hostlers and hostler helpers, these employees had been aggrieved for several years at the Terminal's persistent demands that the employees work overtime after completing a day's work of eight hours. The employees tried to remedy this situation in 1951 and again in 1953, by obtaining successive agreements from the Terminal in which it was agreed that overtime work would not be required except under specified circumstances. Notwithstanding this, the Terminal persisted in its demands for overtime services under conditions which the employees considered violative of the terms of the current agreement.

The Terminal has paid for the actual amount of overtime work the employees have performed. But each time the Terminal has requested an employee to work overtime under circumstances that the employee considered were violative of the terms of the agreement, the employee has treated the demand as a request that the employee start a second shift of work, and has accordingly filed a claim for one day's pay. The last agreement limiting overtime work was dated April 16, 1953, and by June 26, 1953, one hundred such time claims had been filed with the Terminal. By September 6, 1954 nearly a thousand such claims had accumulated. The first one hundred such time claims were turned down by the highest operating officer of the Terminal on September 25, 1953.

On December 21, 1953, the employees made a third attempt to correct the cause of their grievance, through collective bargaining. Speaking for the employees, the Brotherhood of Locomotive Firemen and Enginemen requested the Terminal to agree to new conditions restricting its demands for overtime services. The Brotherhood

also requested the Terminal to agree to a money settlement of the accumulated time claims. The Terminal countered these requests by proposing numerous changes in the basic collective agreement.

Conferences were held on these requests, but without visible progress toward settlement. On February 3, 1954, the Brotherhood of Locomotive Firemen and Enginemen distributed a strike ballot among the employees concerned, listing five issues which the Brotherhood had been unable to settle in conferences with the Terminal's officers. The first three issues were time claims, principal among which was the initial group of one hundred overtime-work claims. The fifth issue was the request for a change in the agreement against overtime work. The ballot solicited the employees' votes on the question whether they would be prepared to strike if the Terminal persisted in its refusal to negotiate a settlement of the five issues. The Terminal was formally advised of the distribution of the strike ballot and of the fact that a large majority of the employees approved a withdrawal from service if the situation required such action.

On the same day that the strike ballot was distributed to the employees the Terminal wired the National Mediation Board that it was faced with a threatened work stoppage and requested the Board's mediation services in order that the "status quo" might be maintained. (App. B, p. 51.)

The Brotherhood promptly advised the Mediation Board that it desired the Board to mediate the entire dispute and that the employees would not strike unless and until the mediation procedure failed to produce a settlement. The Board did not mediate the time-claims dispute, however, because of the Terminal's insistence that such disputes should be submitted to the National Railroad Adjustment Board for decision, and in keeping with this

position the Terminal refused to discuss the time-claims dispute in conferences conducted by the mediator.

By March 25, it was evident that the Terminal would not participate in mediation on the time-claims dispute. The Brotherhood, in consequence, gave notice to the Board on March 26 that the employees would withdraw from service on March 29 because of the time-claims dispute. On the same day, March 26, the National Mediation Board asserted the authority vested in it by Section 5, First (b) of the Railway Labor Act[1]; by proffering its services to mediate the entire dispute. The Board urged the Terminal "to immediately enter conferences with Brotherhood representatives on all matters covered in strike ballot including time claims." (App. B, p. 52.)

The Board's proffer of services proved ineffectual because the Terminal filed the instant suit late on March 26 and obtained from a Missouri state court an order restraining its employees from striking on March 29.

The Terminal's amended petition asserts two grounds in support of its prayer for an injunction against the threatened strike of its employees. It asserts that by the enactment of the Railway Labor Act, Congress has imposed upon railway employees the choice of either submitting their grievances to the National Railroad Adjustment Board for decision when their grievances result from the interpretation or application of collective agreements, or of abandoning such grievances. The right to strike when aggrieved by such disputes, according to the Terminal, has been taken from railway employees by the Railway Labor Act.

The second ground urged in support of the Terminal's prayer for an injunction against its employees is that the one hundred time claims resulting from the alleged viola-

[1] 45 U. S. C. Sec. 155, First (b).

tion of the agreement against overtime work were outlawed on March 25, 1954, because of a time limitation imposed upon the processing of claims and grievances by Section 17 of an agreement entered into on August 11, 1948, by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America, with the major railroads of the country. The railroads were represented in negotiations leading up to this agreement by three committees known as The Eastern Carriers' Conference Committee, The Southeastern Carriers' Conference Committee, and The Western Carriers' Conference Committee. The Terminal was represented by The Western Carriers' Conference Committee. The chairman of this Committee was Mr. Daniel P. Loomis.

Section 17 provides, in substance, that if "claims or grievances" are not satisfactorily disposed of at the operating level, they may be appealed to the highest officer designated by the carrier to handle claims and grievances. The six-month time limitation provision reads as follows:

> "All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievances involved."

The Terminal asserts in its amended petition that the defendants did not institute proceedings "before a tribunal having jurisdiction pursuant to law" to enforce the one hundred time claims within the time permitted by Section 17.

The petitioners, by their answer, deny that the right to strike over grievances has been taken from railway

employees by the Railway Labor Act. The petitioners by their answer assert affirmatively that they instituted proceedings within the time required by Section 17 to keep the one hundred time claims alive in the same manner that they had done on prior occasions; that the National Mediation Board had indicated its willingness to assume jurisdiction over the dispute based upon the time claims by proffering its mediatory services. The petitioners further plead affirmatively that the Terminal wrongfully declined to respond to the National Mediation Board's proffer of mediation services, and in instituting the instant suit the Terminal unlawfully prevented the Board from performing its administrative duties.

At the trial the deposition of Mr. Daniel P. Loomis was introduced into evidence by the defendants. Mr. Loomis was the collective bargaining agent representing the Terminal when the August 11, 1948, agreement containing the contractual limitation provision was negotiated. Mr. Loomis testified that the contractual limitation provision was made a part of the August 11, 1948, agreement at the insistence of the carriers. (App. B, p. 43.) He testified that "the main purpose of the carriers in proposing a limitation on time claims was to set up a reasonable time in which claims should be handled or deemed abandoned and to get rid of stale claims." (App. B, p. 49.)

Mr. Loomis testified regarding the understanding the carriers' bargaining representatives had concerning the meaning of the six-month limitation rule. He testified that it was not the intention of the carriers to exclude the use by the employees of any tribunal available under the Railway Labor Act for the purpose of resolving disputes. He expressly disclaimed that the carriers intended by this agreement to confine employees to the use of the National Railroad Adjustment Board, and he affirmatively stated

that the spreading of a strike ballot followed by mediation or the establishment of an emergency board would constitute the institution of proceedings "before a tribunal having jurisdiction pursuant to law," hence fulfilling the requirement of the contractual limitation agreement for keeping claims alive. Mr. Loomis testified in this connection:

> "The 1948 agreement was intended to permit whatever steps were open to the organizations under the Railway Labor Act." [2] (App. B, p. 50.)

In keeping with this view, the Brotherhood circulated a strike ballot among the employees on February 3, 1954, and a large majority of the employees voted to authorize a strike. This action led to the proffer of mediation services by the National Mediation Board, and the mediation of the entire dispute would have occurred had it not been thwarted by the tactics of the Terminal.

The trial court, by an order entered July 7, 1955, ruled that it "does hereby find all of the issues in favor of the plaintiff and against the defendants." An injunction was entered permanently restraining the defendants from carrying out their threatened strike. (App. B, p. 53.)

A timely appeal was taken from the judgment of the trial court to the Supreme Court of Missouri. (App. B, p. 54.) The validity of the permanent injunction was challenged on three grounds involving Federal questions. These were as follows. First, the Railway Labor Act does not take from railway employees the right to strike over time claims and grievances.

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[2] Mr. Loomis testified that he now construes the Railway Labor Act in the same manner as does the Terminal, which is that the Act requires the submission of grievances resulting from the application of collective agreements to the National Railroad Adjustment Board for decision, and that a strike based upon such grievances is forbidden by the Act.

Second, the time claims based upon the Terminal's violation of the agreement against overtime work were not outlawed by the six-month contractual limitation rule, because the National Mediation Board is vested by the Railway Labor Act with jurisdiction over disputes of this character when they result in a labor emergency, and a timely strike vote was taken by the defendants which resulted in a proffer of the National Mediation Board's services to both parties.

Third, the Terminal should not be allowed to take advantage of its success in frustrating the effort of the National Mediation Board to mediate the strike dispute, and the issuance by the state court of an injunction in favor of the Terminal under such circumstances is a violation of the Federal doctrine of primary administrative jurisdiction.

The Supreme Court transferred the appeal, for jurisdictional reasons, to the Kansas City Court of Appeals for decision by that court upon the records and briefs that were before the Supreme Court. (App. B, p. 69.)

The Kansas City Court of Appeals affirmed the judgment entered by the trial court. (App. A, p. 16.) In doing so it declared that the threatened strike was "violative of both the Bargaining Agreement and the Railway Labor Act." (App. A, p. 15.)

A timely motion for rehearing or, in the alternative, that the case be transferred to the Supreme Court of Missouri, was filed with the Kansas City Court of Appeals, and overruled. (App. B, p. 70.) Thereafter a timely motion for transfer of the case to the Supreme Court of Missouri was filed with the Supreme Court. (App. B, p. 70.) This motion was overruled by the Supreme Court of Missouri on January 14, 1957. (App. A, p. 16.)

## REASONS FOR GRANTING THE WRIT

The Kansas City Court of Appeals has decided Federal questions of substance not heretofore determined by this Court. Foremost among these is the proposition that the Railway Labor Act takes from railway employees the right to strike over grievances.[3]

The last general amending of the Railway Labor Act occurred more than twenty years ago. Yet the proposition that the Congress by those amendments took from railway employees a fundamental right derived from the common law and important to labor above all other rights, to wit, the right to strike over grievances, has only very recently been publicly asserted by employers in the railway industry. It has found support in only two cases known to the petitioners one of which is now before this Court for review on a writ of certiorari (*Chicago River and Indiana Railroad Company v. Brotherhood of Railroad Trainmen,*

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[3] The court's attention is directed to the opinion in *Elgin, J. & E. Ry. Co. v. Burley*, 325 U. S. 711, in which the traditional manner of classifying railway disputes is described as follows:

> "The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. * * *
>
> "The first relates to disputes over the formation of collective agreements or efforts to secure them. * * *
>
> "The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which *no effort is made to bring about a formal change in terms or to create a new one.* * * * In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world." 325 U. S. 711 at 722. (Italics ours.)

Ostensibly, the dispute involved in the instant case is a dispute over grievances and should accordingly be classified as a "minor dispute." But the dispute fits the category of a "major dispute," because the time claims out of which the dispute developed are asserted primarily in support and aid of a request for a change in the terms of the agreement against overtime work.

*et al.*, Docket No. 313) and the instant decision of the Kansas City Court of Appeals. The proposition was not sustained in a third decision, *Brotherhood of Railroad Trainmen, et al. v. Central of Georgia Railway*, Docket No. 84, pending before this Court on a writ of certiorari.

The question whether the right to strike has been taken from railway employees is presented in an uncomplicated setting by the instant case. This contrasts with the two cases now before this Court, wherein, if the carrier's position is sustained, the right to strike will probably be held to be qualified because of the necessity of protecting the jurisdiction of the National Railroad Adjustment Board. In both of these cases the dispute had progressed through the collective bargaining stage. The National Mediation Board had also exhausted its authority in attempting to bring about a settlement through mediation. In each instance the employees elected to withdraw from service in an effort to induce the carrier to settle the grievance, after the dispute had been submitted *by the carrier* to the National Railroad Adjustment Board for decision by that tribunal.

*Protecting the jurisdiction of the Adjustment Board is not a factor in the instant case.* The Terminal has manifested no inclination to submit the instant dispute to the Adjustment Board. The employees do not desire to submit the dispute to the Adjustment Board.[4]

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[4] The last annual report (twenty-first) of the National Mediation Board to the Congress for the fiscal year ending June 30, 1955, discloses (p. 40) that the First Division had 3014 cases on its docket at year's end; that during the year 314 cases were disposed of by decision, 339 cases were withdrawn from the docket by agreement of the parties, and 946 new cases were docketed. At this rate of disposition of docketed cases, a delay of some *five years* must currently be anticipated between filing date and award date.

The dispute in the instant case has been in the collective bargaining stage. It has not actually entered the mediation stage because of the Terminal's determination to prevent that method of achieving settlement from being employed. The Terminal asserted in its amended petition that the employees must submit their claims to the Adjustment Board, or abandon them.[5] The courts of Missouri sustained this contention.

The practical effect of the lower court's decision is to substitute a form of compulsory arbitration for the system of collective bargaining supported by the right to strike, which has heretofore often been the means of resolving large blocks of accumulated time claims and other grievances in the railway industry.[6]

The Railway Labor Act contains no specific language that takes from employees the right to strike, whatever the cause of the dispute may be, aside from the prohibition contained in the emergency provisions of the Act which forbids changes being made by either party to a dispute after an emergency board has been appointed by the President.[7] The decision reached by the Missouri courts in this

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[5] When a backlog of time claims provides essential support for a collective bargaining effort undertaken by employees for the purpose of inducing their employer to correct an objectionable working condition, being compelled to file the time claims with the Adjustment Board, which is four to five years behind on its docket of cases, would obviously be a victory for the employer, because it would deprive the time claims of most of their influence in the collective bargaining struggle.

[6] A system of compulsory arbitration of grievances would, in fact, be preferable to the system that would compel all claims and grievances to be decided by the National Railroad Adjustment Board, for compulsory arbitration would have the advantage of enabling the disputants to select the arbiters and would doubtless avoid the four or more years of delay between the filing of a claim and the rendition of an award by the First Division of the Adjustment Board.

[7] 45 U. S. C. Sec. 160.

instance is a conclusion that rests solely for its justification upon an implication derived from the Congressional decision to establish the National Railroad Adjustment Board. Because the Congress saw fit to establish a tribunal having nation-wide jurisdiction to decide railway disputes when submitted by either party to the dispute, it necessarily follows, according to the Terminal's contention, that the right to strike over such disputes was taken from employees by the Congress.

This conclusion is not required by the premise. The privilege of, and the importance attached by employees to, the right to withdraw from their employment when dissatisfied with that employment, is such that a decision holding that the right to strike has been taken from the employees of the railway industry by the Railway Labor Act poses a federal question of great substance. The collective bargaining process depends for its success upon the disputants having substantially equal bargaining powers, which is to say, equal economic strength. A decision that takes from the employees of a whole industry a great part of their bargaining strength, creates a serious threat to the success of the Railway Labor Act as an instrument for assuring the uninterrupted flow of interstate commerce.

The second Federal question decided by the Missouri state courts which has not heretofore been determined by this Court is concerned with the jurisdiction of the National Mediation Board. The Mediation Board is described in the Railway Labor Act as "an independent agency in the executive branch of the Government."[8] It is probably correct to say that the Mediation Board is the key instrumentality upon which the success of the Railway Labor Act, as a regulatory scheme for avoiding

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[8] 45 U. S. C. Sec. 154, First.

interruptions to interstate commerce, depends. The legal position asserted by the Terminal in the courts below, and the affirmance of that position by the judgments and opinions of those courts, are a challenge to and an interference with the jurisdiction and statutory responsibility of the Mediation Board.

The Mediation Board's jurisdiction is first put in issue by the Terminal's assertion that the Board does not have jurisdiction to mediate disputes based upon grievances. This assertion is made in connection with the question whether the one hundred time claims became outlawed on March 25, 1954, and hence could not provide the basis for a lawful strike, because proceedings involving the claims had not been instituted by the employees "before a tribunal having jurisdiction pursuant to law" within the time required by section 17 of the August 11, 1948, agreement.

Did the threatened strike by the Terminal's employees, resulting from the Terminal's refusal to settle the one hundred time claims, create a "labor emergency" [9] which entitled the Mediation Board to assume jurisdiction of the dispute and to attempt through mediation to bring the parties to agreement? [10] If this question is answered in the affirmative, then the contractual limitation agreement must be interpreted in the light of this fact.

The petitioners have contended throughout this litigation that the jurisdiction of the National Mediation Board extends to and includes every kind of employer-employee dispute if the dispute matures to the point of threatening

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[9] 45 U. S. C. Sec. 155, First (b).

[10] This question assumes, for the purposes of argument, that the time-claims dispute is completely divorced from the dispute created by the employees' request for a change in the terms of the agreement against overtime work.

to interrupt the flow of interstate commerce.[11] This includes the situation where a carrier persists in either misapplying or ignoring the terms of a collective agreement and a large backlog of accumulated claims develops which the carrier refuses to settle, and the employees become aggrieved over the situation to the point of taking a strike vote. This situation constitutes, the petitioners contend, a "labor emergency" within the meaning of Section 5, First, (b) of the Railway Labor Act, and the National Mediation Board has the responsibility of entering upon the scene and exercising its mediatory powers to the full in an effort to bring the parties to agreement and maintain the uninterrupted flow of interstate commerce. The taking of the strike vote, followed by the assumption of jurisdiction over the dispute by the National Mediation Board, or an attempt by the Board to assume jurisdiction, is ample notice to the employer that the claims are alive and will be progressed to a conclusion by the interested employees.

The petitioners contend that the taking of a strike vote, followed by a proffer of mediatory services by the Mediation Board, constitutes the institution of proceedings "before a tribunal having jurisdiction pursuant to law" within the meaning of this phrase as it was understood by the representatives of the parties to the August 11, 1948, agreement. The one hundred time claims were

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[11] The National Mediation Board, while insisting that disputes resulting from unsettled grievances are primarily the responsibility of the National Railroad Adjustment Board, have nevertheless consistently assumed jurisdiction of such disputes when strikes threaten, and the Board has usually been successful in bringing about a settlement, either through direct negotiations between the parties while aided by a mediator, or by inducing the parties to agree to the establishment of a special tribunal with authority to decide the entire dispute. See the Annual Reports of the National Mediation Board to the Congress.

accordingly not outlawed, and the issuance of a permanent injunction by the Missouri state court against the petitioners to prevent them from engaging in the threatened strike was an unwarranted interference with the petitioners' rights under the common law and under the Railway Labor Act.

The Terminal's actions in this controversy subsequent to February 3, 1954, have been largely controlled by its determination to prevent the National Mediation Board from mediating the time-claims dispute. The Terminal, at the time that it invoked the Board's services and subsequent thereto, advised the Board that it did not consider that that part of the dispute covered by the strike ballot and involving time claims should be mediated by the Board, but rather, should be submitted to the Adjustment Board. The Brotherhood, on the other hand, urged the Mediation Board to assume jurisdiction of the whole dispute.

The Board at first took no decisive stand on the point. It accepted the invocation of its services and begged the question by announcing that it would conduct mediation on all *mediable items* involved in the dispute. (App. B, p. 51.) The Terminal's officers refused to discuss the time-claims dispute with the mediator assigned by the Board to mediate the case.

When the Brotherhood advised the Mediation Board on March 26 that the employees would carry out their February 3 vote to strike over the time-claims dispute by withdrawing from service on March 29, the Board took a decisive step toward performing its statutory duty by requesting both parties to enter conferences covering the whole dispute under its mediation. (App. B, p. 52.) But the Terminal, being determined that the Mediation Board should not succeed in assuming jurisdiction over the time-

claims dispute, immediately sought and obtained a restraining order from the Missouri state court, three days before the strike was set to begin. The Terminal answered the Mediation Board by advising that the threatened strike had been eliminated by the court injunction.

This utter disregard by the Terminal and by the Missouri state courts, of the Mediation Board's authority to assume jurisdiction of a labor dispute that threatens to interrupt interstate commerce, precipitates a Federal question of substance. Whether parties to a railway labor dispute may disregard or otherwise thwart the efforts of the National Mediation Board to perform its responsibilities under the Railway Labor Act, and whether state courts may disregard the Board's assumption of jurisdiction over a railway dispute, pose questions of importance to the railway industry as a whole, which have not been determined by this Court.

## CONCLUSION

For the foregoing reasons, petitioners pray that a writ of certiorari be granted in this instance.

Respectfully submitted,

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FILED
JAN 22 1957
JOHN T. FEY, Clerk

# In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 702.

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vs.

KANSAS CITY TERMINAL RAILWAY COMPANY,
a corporation,

*Respondent.*

## APPENDIX OF PETITIONERS.

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## APPENDIX A.

### OPINION BY KANSAS CITY COURT OF APPEALS.

No. 22,522.

IN THE KANSAS CITY COURT OF APPEALS
OCTOBER SESSION 1956.

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KANSAS CITY TERMINAL RAILWAY COMPANY,
a Corporation,
*Respondent,*

vs.

KEITH L. MANION, *et al.*,
*Appellants.*

---

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY.
HONORABLE PAUL A. BUZARD, JUDGE.

---

The Railroad, by complaint, sought and the Circuit Court on July 7, 1955, granted an Injunction against the threatened, imminent strike by the national Brotherhood, local lodge and named defendants in a class. Evidence was presented showing that Terminal in Kansas City owns and operates the Union Station and terminal facilities for 12 interstate railroads, its service, including engines and tracks, switching and transfer of passengers, mail, baggage and freight cars. Evidence was also offered tending to show that the proposed strike would not only paralyze Terminal's business, but would cripple the railroad transportation system in Kansas City and adversely affect it throughout the whole area. Defendants generally concede these conclusions.

Thereafter, defendants petitioned to remove this cause to the Federal District Court for the Western Dis-

trict of Missouri. On Terminal's Motion the case was remanded to the state court by Hon. Albert A. Ridge, District Judge. Defendants' Motion for Judgment or in the alternative Motion for New Trial was denied. Defendants then appealed to the Supreme Court of Missouri, which court ruled it was without jurisdiction and transferred to the Kansas City Court of Appeals (see *Kansas City Terminal Railroad Company, v. Keith L. Manion, et al.*, 290 S. W. 2d, 63).

On March 31, 1951, plaintiff and The Brotherhood of Locomotive Firemen and Enginemen entered into a collective bargaining agreement providing that all claims or grievances by or on behalf of any employee would be processed by presentation to the carrier's designated officer, and could be appealed from rank to rank to the carrier's highest officer designated to handle claims and grievances. Paragraph C, Article 7, of the Agreement provides "All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement, of the claim or grievance involved." On April 16, 1953, the "No New Work Rule" amendment was added. This Amendment provided that engineers, firemen, and hostlers would be given no new work after completing an eight-hour day, but that they might be required to finish work assigned before the end of the eight hours and which they were proceeding on at the end of the eight hours.

Many disputes arose between Terminal and the workers, involving interpretation and application of the agreement as amended by the "No New Work Rule." Claims were filed by or on behalf of numerous employees for

penalty pay. These were presented by the Brotherhood through administrative channels to the carrier's highest officer designated to process such claims, all as provided in the agreement. Among others, these facts were stipulated by the parties:

(1) "Payment has been made for all straight-time work by the employees for or on whose behalf claims herein involved have been presented and overtime for hours actually worked has been paid at one and a half times the computed hourly rate of the employee."

(2) That time claims for penalty pay were filed on behalf of or by 1114 engineers and 1069 firemen. These claims were prosecuted through carrier officer channels and appealed to Mr. C. E. Breternitz, the carrier's highest officer designated to handle claims and grievances.

(3) That each of these claims has been denied by the said C. E. Breternitz, the dates of the various denials being set forth in the stipulation.

(4) "That no proceedings to enforce the payment of any of the time claims has ever been instituted by any defendant or by his duly authorized representative before any court or before the National Railroad Adjustment Board or before any tribunal having jurisdiction thereof pursuant to agreement of the parties."

Giving consideration to the denial dates as set out in the Stipulation and the date of the Circuit Court's Injunction, we find that more than six months elapsed between the last final denial and the issuance of the injunction. It could here be stated that "overtime pay" which Terminal paid was time and one half for work hours required over eight in one day. "Penalty pay" which defendants claimed, was for one full day's additional pay, if they were required to work more than the eight hours.

On February 3, 1954, the Brotherhood distributed among its employees a strike ballot on four questions: (1) Time claims based upon the "No New Work Rule." (2) Time claims based upon the Terminal's action in permitting Kansas City Southern crews to do switching at the Cudahy Plant. (3) Miscellaneous time claims based upon other provisions of the agreement. (4) Proposed changes in the terms of the collective agreement. The result was a majority vote for the proposed strike if the Brotherhood was unable to get these claims satisfactorily adjusted.

On February 11, 1954, Terminal invoked the services of the National Mediation Board under Item 4; that is, the proposed changes in the terms of the collective agreement, but took the position that Items 1, 2 and 3, namely, the time claims, were not mediable. Federal Mediator Lane was assigned to this dispute. He came to Kansas City on March 23, 1954, to attempt mediation. Terminal refused to discuss the question of the time claims and reasserted its contention that these were not mediable. The Brotherhood sought mediation on all four issues and declared its willingness to forego striking if the Board would take jurisdiction of the entire dispute, but reasserted its intention to strike if the time claims were not involved. The National Mediation Board recommended that all issues be mediated and the threatened strike be deferred. Both parties adhered to their positions as first declared. The Brotherhood fixed a date for the threatened strike. Terminal secured this Restraining Order. The Mediation Board quietly withdrew. The U. S. District Court and the Supreme Court of Missouri each disclaimed jurisdiction. So, the controversy and particularly the action of the Circuit Court in granting injunctive relief, comes to this Court for appellate review.

In addition to briefs from the plaintiff and defendants we have been favored with briefs from Conference Com-

mittees of both Railway and Labor, as Amici Curiae. As stated on page 67 of Appellants' Brief:

> "This case thus turns upon Federal rights, created by a Federal statute, and this Court is accordingly called upon to decide questions arising under Federal law. State courts have, with certain exceptions, concurrent jurisdiction with Federal courts over civil suits arising under the Constitution and laws of the United States. *Minneapolis & St. Louis R. R. vs. Bombolis,* 241 U. S. 211; *Grubb v. Public Utilities Comm. of Ohio,* 281 U. S. 470." "State courts, when enforcing rights flowing from Federal laws, should enforce them in the same manner and extent as Federal courts would enforce them in similar suits."

Tersely stated, plaintiff asserted it was entitled to the Injunction on two grounds: (A) The Railway Labor Act prohibits a strike to force payment of time claims. It contends that time claims are "minor disputes," as contrasted with, for example, an effort to enforce collective bargaining demands, or write a new basic contract, either of which would be a "major dispute," to secure adjustment or settlement of which, a strike would be a proper procedural weapon. It says, however, that minor disputes must be referred to the Adjustment Board and a strike to coerce settlement of such lesser disputes has for the general public good and in the interest of labor peace been forbidden by the Act. (B) The proposed strike was a breach of the contract entered into by the parties which provided that time claims be prosecuted to the highest carrier official and after denial claimant had six months and six months only, to institute proceedings before some other tribunal having jurisdiction thereof; (plaintiff claiming this authorized tribunal was the National Adjustment Board); that since claimants permitted six months to elapse after

final denial without proceeding further, the claims under the contract are barred, and that all of these requirements were strictly in conformity with the Act.

Defendants assert that the Railway Labor Act and the judicial precedents interpreting the same do not forbid but rather recognize the right to strike. They claim that the Common Law, too, recognizes, and the Constitution protects, an individual's right to work or not work—a condition which is surely one of the attributes of human liberty. It might be observed here, of course, that the right of an individual person to work or not to work is not involved. We are concerned only with group or concerted action.

The National Railway Labor Act does not exactly spell out either Terminal's or Defendants' interpretation. Federal Courts have differed both as to meaning and application. It is agreed, without exception we think, that in correctly determining the question, we must examine, review, and consider Railway Labor Law as it has developed in America during the past 36 years. We must examine the legislation enacted. We must seek for the legislative purposes. We must abide by authoritative judicial interpretations. All this must be done in the light of national economic change and growth.

With the emergence of big industry in America, engaged in far-flung interstate commerce, employing thousands upon thousands of workers and furnishing products and services required daily by the people, the interest of the national public in labor relations became apparent. Our national transportation system based largely upon railroads was a critical field. It became evident, too, that only by organization through unions could the workers present the force, finance, and capacity to adequately and

effectively present their cause to employers, to the Public and to the Congress.

It has long been recognized that the right to strike and to strike through concerted action is an inherent right. 31 *American Jurisprudence,* Labor, Section 192, says:

> "Generally.—It is the settled general American rule, effected largely without the intervention of legislation, that workmen who are not bound by contract for a definite period, and have not by agreement, freely made, given up such rights, may, without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel their employers to accede to demands for better terms and conditions."

In *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184 (1921) Chief Justice Taft said:

> "A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has, in many years, not been denied by any court."

Economic growth and change made it inevitable that our national Congress should venture into the field of labor relations. General welfare and interstate commerce offered ample authority. The first effort to control railroad labor relations in any degree began with the Transporta-

tion Act of 1920 (41 Stat. 469). This was at the time the railroads were returned to private control and operation after the war period of Government operation. Congress entered this explosive field with much caution and stayed close to shore. This first Act suggested, approved, and encouraged settlement by peaceful means, of disputes, which might disrupt transportation. It did not limit, alter, or destroy the then existing legal rights of either party. It publicly proclaimed a Congressional interest in and an awareness of the subject.

Six years later the Transportation Act was succeeded by the Railway Labor Act of 1926 (44 Stat. 577; 45 U. S. C. A. Secs. 151-160). Here again Congress legislated on the theory of voluntary cooperation of the parties. Machinery for mediation was provided. The interest of the Public in the field was definitely recognized and asserted.

In 1934 the Railway Labor Act was amended. By this Amendment, for the first time carriers and employees were *required* to bargain and to mediate disputes. The Act provides for an Adjustment Board, a Mediation Board, and an Emergency Board. The Mediation Board was not vested with adjudicatory powers. It provided mediation service only, and on "major disputes" alone. The Emergency Board was a body which could be created by the President if he thought the situation or emergency so demanded. Neither of these Boards had the power to decide or force compliance with their recommendations. The Adjustment Board (Sec. 153 (i) 45 U. S. C. A.) was given jurisdiction to hear and decide disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." Stated another way, the Mediation Board had jurisdiction to hear "major disputes." Both parties were *required* to submit to this mediation, but this Board had no authority to adjudi-

cate disputes or compel compliance. The Adjustment Board, on the other hand, had jurisdiction of the minor disputes, sometimes styled "grievances." If it held in favor of an employee's claim for time pay and the railroad did not comply, it was only necessary to file a petition in some District Federal Court and the findings of the Adjustment Board are *prima facie* evidence of the facts therein stated (Sec. 153 (p) 45 U. S. C. A.) Those familiar with labor relations and labor law have, I believe, a very definite understanding as to what constitutes "major disputes" and what constitutes "minor disputes."

Commissioner Eastman, the Federal Coordinator of Transportation, who was one of the principal authors of the 1934 Amendments, testified as follows before the House Committee on Interstate and Foreign Commerce:

> "Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues." (Hearings, House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., p. 61.)

At a hearing before a senate committee on the bill for the 1934 amendments, the Railroad Brotherhoods' representative, Mr. Harrison, stated:

> " 'These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.' " 325 U. S. 728, note 24, 65 S. Ct. 1292.

The following letter dated June 14, 1934, signed by Commissioner Eastman and Secretary of Labor Miss Perkins, to President Roosevelt, was put before the Senate at 78th Cong. Rec. 12375 (1934), as an expression of Administrative purpose:

> "The Coordinator has drafted amendments to the Railway Labor Act designed to * * * provide for *compulsory* adjustment of individual grievances. * * *
>
> "If the proposed amendments are not enacted * * * a host of strike threats and other labor difficulties will arise this summer, demanding presidential intervention. Similar difficulties are also likely to result because of the unavailability of adequate grievance-adjustment machinery as proposed by the amendments."

Mr. Chief Justice Hughes in *T. & N. O. v. Ry. Clerks*, 281 U. S. 548, 50 S. Ct. 427, speaking on the purpose of the Act, said this: "The Brotherhood insists, and we think rightly, that the major purpose of Congress in passing the Railway Labor Act was 'to provide a machinery to prevent strikes.' "

The difference between disputes over time claims and disputes over the making of a new collective agreement is well understood in railway labor circles. As to disputes over grievances it contemplates the existence of a collective agreement already concluded.

In *Elgin, J. & E. R. Co. vs. Burley*, 325 U. S. 711, 65 S. Ct. 1282, the Court said:

> ' "The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.

"Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, of. 7; (Brotherhood of Railroad) Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50, 64 S. Ct. 413, 88 L. Ed. 534; and finally to possible presidential intervention to secure adjustment. 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

"The Course prescribed for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. * * * Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place * * * the Adjustment Board was created and given power to decide them." '

In *Slocum v. Del. L. & W.*, 339 U. S. 239, 70 S. Ct. 577, the Supreme Court said:

> "The act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems.
>
> "The paramount importance of having these chosen representatives of railroad and unions adjust grievances and disputes was emphasized by our opinion in *Order of Conductors v. Pitney, supra.*"

In *O. R. C. v. Pitney*, 236 U. S. 561 (p. 566), 66 S. Ct. 322, the Court said of the Adjustment Board:

> "Not only has Congress thus designated an agency peculiarly competent to handle the basic question here involved, but * * * it also intended to leave a minimum responsibility to the courts."

Counsel for Terminal have attached to their brief the complete Opinion of U. S. District Judge Scarlett in *Central of Georgia Railroad v. Brotherhood.* Defendants countered by appending the Opinion of the Fifth Circuit Court of Appeals in the same case. There the dispute arose over whose job it was to couple and uncouple steam, signal and air hoses. The District Court granted an Injunction. The Fifth Circuit in a 2-1 division, *Brotherhood v. Central of Georgia Railroad Co.*, 229 Fed. 2nd, 901, reversed and dissolved the Injunction. That majority opinion

ruled that the Norris-LaGuardia Act (29 U. S. C. A. Secs. 101-115) deprived Federal Courts of jurisdiction to enjoin strikes, and declined to apply the Railway Labor Act. The minority Opinion concluded that the Norris-LaGuardia Act did not apply and that under the Railway Labor Act issuance of the Injunction was right and proper.

In this connection we refer to *Chicago River and Indiana Railroad Co. v. Brotherhood*, 229 Fed. 2nd, 926. Here the dispute was over 19 pay claims and 2 claims for reinstatement. The parties conceded the disputes were "minor issues." The 7th Circuit Court held that the Norris-LaGuardia Act did not apply and that under the National Railway Labor Act the Court had jurisdiction to grant, and under the facts did rightly grant, the Injunction.

It should here be noted that on 10-16-56 the Supreme Court of the United States agreed to review both the Central Georgia and the Chicago River cases. Pending that review we note that the 1934 amendment setting up the Adjustment Board came two years after passage of the Norris-LaGuardia Act. In *Cook County National Bank v. United States*, 107 U. S. 445, 2 S. Ct. 561, the Court said:

> "A law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

In *Virginian Railway Company vs. System Federation*, 300 U. S. 515, 57 S. Ct. 592, the Court said:

> "Neither the purposes of the later act, as amended, nor its provisions when read, as they must be, in the light of our decision in the Railway Clerks case, supra, lend support to the contention that its enactments,

which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

We believe that the provisions of the Norris-LaGuardia Act affect the present Injunction only so far as it is not in conflict with the later provisions of the Railway Labor Act (45 U. S. C. A. Sec. 152, Subd. 9).

Numerous other cases have been cited in the briefs and extensive excerpts from Congressional hearings have been included. Manifestly, this Opinion can include but few of these citations and quotations. However, consideration of Administrative and Congressional expressions of purposes and objectives, the Legislative enactments through the years, as interpreted and solidified by judicial interpretations, and by long experience, leads inexorably to certain sure conclusions:

(1) The legislative purpose was to provide machinery to prevent or at least lessen the likelihood of railroad strikes.

(2) Respecting "major disputes" Government sought to provide a fair and impartial mediation service (Mediation Board). Both labor and management had representatives thereon. Government authorship, supervision, and Public Opinion each contributed to create an impartial atmosphere, to produce fair recommendations and honorable mediation help, but Government through the Congress has been unwilling to force compliance in this field of "major disputes." Either party may refuse to accept. The employees' right through the Union to strike, while delayed by requiring mediation first, is not destroyed.

(3) As to "minor disputes" which definitely includes disputes over time claims, the governmental authority has

determined that the injury to public welfare resulting from a railway labor strike, overbalances, outweighs, and submerges the long recognized right to concertedly strike. The mass of these grievances or minor disputes which arise was also an impelling reason. The law requires the parties to attempt to adjust these controversies among themselves, and if settlement proves impossible, the employees (union) may appeal to the Adjustment Board and upon favorable determination there, the Judgment or finding may be enforced by filing a transcript thereof in a Federal Court. A further objective was to relieve the courts of the necessity of trials on the merits of the mass of grievances and time claims, and controversies which might arise. The Adjustment Board in such disputes was a Referee with power to decide.

Usually these injunctions have been sought in Federal and not State Courts. But, where the threatened strike is violative of both the Bargaining Agreement and the Railway Labor Act, as we find here, the injured party may elect to seek and ought to be able to secure relief in a State Forum. It is abundantly clear that Terminal is without adequate remedy at law. Both the Public and Terminal would suffer irreparable loss if the strike comes. We are unable to find that the Circuit Court abused its discretion in granting equitable relief. Its Judgment in granting the Injunction ought to be and is, affirmed.

FRED H. MAUGHMER,

Fred H. Maughmer, *Judge, sitting as Special Judge by order of the Supreme Court.*

DEW, *P.J.*, SAMUEL A. DEW, *concurs.*
CAVE, *J.* NICK T. CAVE, *concurs.*

**JUDGMENT OF KANSAS CITY COURT OF APPEALS, ENTERED NOVEMBER 5, 1956.**

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants costs and charges herein expended, and have therefore execution.

(Opinion filed.)

**ORDER OF SUPREME COURT, STATE OF MISSOURI, OVERRULING APPELLANTS' APPLICATION FOR TRANSFER OF CASE TO SUPREME COURT.**

Now at this day, on consideration of appellants' application to transfer the above entitled cause from the Kansas City Court of Appeals, it is ordered that said application be, and the same is hereby denied.

**THE RAILWAY LABOR ACT, SECTIONS 2, 3, 5 AND 6.**

* * * * *

SEC. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of

carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"General Duties

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their

representatives of those who or which are not employees of the carrier.

[3] "Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

[3] "Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any con-

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[3] Amended by Public Law 914, 81st Cong. (see sec. 2 eleventh).

tract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

* * * * *

SEC. 3. Section 3 of the Railway Labor Act is amended to read as follows:

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by

selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the

selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board

shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding

upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of

the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective

divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Ad-

justment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

* * * * *

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

* * * * *

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended

change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

* * * * *

## APPENDIX B.

### AMENDED PETITION FOR INJUNCTION.

No. 573,799. Div. No. 8.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI,
At Kansas City.

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KANSAS CITY TERMINAL RAILWAY COMPANY,
a corporation,
*Plaintiff,*

vs.

KEITH L. MANION, *et al.*,
*Defendants.*

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### AMENDED PETITION FOR INJUNCTION.

Now comes plaintiff and, by leave of Court, files its amended petition herein and for its claim for relief against defendants states:

1. Plaintiff (hereinafter called "Terminal") is a corporation organized and existing under and by virtue of the laws of the State of Missouri and is an interstate common carrier by railroad subject to the provisions of the Railway Labor Act (45 U. S. C. A., Sec. 151, et seq.), having its principal place of business in Kansas City, Missouri. It owns and operates in Kansas City, Missouri, and in Kansas City, Kansas, a Union Station and various terminal and mail facilities, including engines and tracks for the switching and transfer of passenger, mail and baggage, and freight cars, for the use of the twelve interstate railroads running into and out of Kansas City, Missouri, and the United States Post Office.

2. Brotherhood of Locomotive Firemen & Enginemen (hereinafter called "B. L. F. & E.") is a voluntary, unincorporated railroad labor organization, national in scope, and is now, and has since before March 31, 1951, been, the collective bargaining representative under the Railway Labor Act for all firemen, engineers, hostlers, and hostler helpers employed by Terminal. It is represented on Terminal by Roanoke Lodge No. 692. Defendants Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., are members of B. L. F. & E. and of said Lodge No. 692 and are now, and have for a long time been, firemen and engineers employed by Terminal. Defendant Keith L. Manion is the General Chairman of the General Committee of B. L. F. & E. and is the Local Chairman of its Lodge No. 692. M. F. Landes is the Treasurer of said General Committee. J. M. Dibal, Jr., is Recording Secretary of said Lodge No. 692. The interests in this action of each member of B. L. F. & E. and of said Lodge No. 692 and of the class of firemen, engineers, hostlers, and hostler helpers employed by Terminal are similar to and of the same character as the interests of all members of such union and of such class, differing only with respect to their seniority and assignment. The persons identified in this paragraph fairly and adequately represent B. L. F. & E. and said Lodge No. 692 and the class of which they are members and are sued in this action individually and as such representatives.

3. The other defendants named herein are employed by Terminal as firemen and enginemen and hostlers and hostler helpers and, as such, are represented by B. L. F. & E. under the Railway Labor Act.

4. On March 31, 1951, plaintiff and B. L. F. & E. as collective bargaining representative for all firemen, engineers, hostlers, and hostler helpers employed by Terminal

executed a collective bargaining agreement at Kansas City, Missouri, as provided for by, and in accordance with the Railway Labor Act whereby, among other things, the parties agreed that all claims or grievances by or on behalf of the employee involved would be processed by presentation to a designated officer of the carrier and appeal through its highest officer designated to handle claims and grievances, and further agreed in subsection (c) of Section 2 of Article VII that, in the event of an adverse decision by such highest officer, all claims or grievances involved therein shall be barred unless within six months from the date of such adverse decision "proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

5. On April 14, 1953, plaintiff and B. L. F. & E., as the representative for all firemen, engineers, hostlers, and hostler helpers employed by Terminal, amended the provisions of the collective bargaining agreement of March 31, 1951, relating to pay for work done in excess of eight hours a day by a supplemental agreement, effective April 16, 1953, which provided that firemen, engineers, hostlers, and hostler helpers would be given no new work after the expiration of their assigned eight hour period, except that overtime might be required to finish the work being performed at the expiration of the eight hour assignment, or in emergencies. Said collective bargaining agreement of March 31, 1951, as amended by said agreement of April 16, 1953, is and was at all times herein mentioned in full force and effect.

6. Thereafter B. L. F. & E. and the employees it represents claimed that plaintiff violated the April 16, 1953

agreement relating to overtime work and other provisions of the March 31, 1951 agreement; and filed, and are now filing, time claims against plaintiff for penalty pay for overtime and for pay for other work to which they claim to be entitled by plaintiff's alleged violation of said agreement. These claims now aggregate approximately $38,000. Said employees were paid by plaintiff for the overtime they actually worked at the rate of time and one half. The penalty pay claimed is for time not actually worked at the rate of an additional day's wage at time and a half.

7. On June 26, 1953, a substantial number of these time claims growing out of plaintiff's alleged violation of said overtime rule and said other rules were presented to the officer of plaintiff designated to receive them, and on September 25, 1953, the highest officer of plaintiff designated to handle claims and grievances disallowed them. Within sixty days thereafter, B. L. F. & E. notified said officer that his decision was not accepted, but neither B. L. F. & E. as representative of said employees nor any defendant herein individually instituted any proceedings before a tribunal having jurisdiction pursuant to law or agreement of the claims involved. By reason thereof, said claims are barred by the collective bargaining agreement, and defendants' strike to enforce these claims, as hereinafter alleged, is an unlawful breach of said agreement.

8. On October 23, 1953, and at various times since then prior to May 1, 1954, a substantial number of these time claims growing out of plaintiff's alleged violation of said overtime rule and said other rules were disallowed by the highest officer of plaintiff designated to handle claims and grievances. Within sixty days thereafter, B. L. F. & E. notified said officer that his decision was not accepted, but neither B. L. F. & E. as representative of said

employees nor any defendant herein individually instituted any proceedings before a tribunal having jurisdiction pursuant to law or agreement of the claims involved. By reason thereof, said claims are barred by the collective bargaining agreement, and defendants' strike to enforce these claims, as hereinafter alleged, is an unlawful breach of said agreement.

9. After May 1, 1954, a substantial number of these time claims growing out of plaintiff's alleged violation of said overtime rule and said other rules were disallowed from time to time by the highest officer of plaintiff designated to handle claims and grievances. Within sixty days thereafter, B. L. F. & E. notified said officer that his decision was not accepted, but neither B. L. F. & E. as representative of said employees nor any defendant herein individually instituted any proceedings before a tribunal having jurisdiction pursuant to law or agreement of the claims involved. By reason thereof, defendants' strike to enforce these claims, as hereinafter alleged, is an unlawful breach of said agreement.

10. Independent of and apart from the agreement, the Railway Labor Act imposes upon defendants, and each of them, the affirmative duty to pursue and exhaust the administrative remedy available to defendants under said Act which required the orderly prosecution of said time claims before the National Railroad Adjustment Board, the only tribunal having jurisdiction under the Act to determine the merits of these time claims, and precludes a strike by defendants to enforce these time claims.

11. Notwithstanding a substantial number of said time claims are barred by the terms of the March 31, 1951, agreement and notwithstanding defendants' contractual duty to institute proceedings as to said time claims not

barred before a tribunal having jurisdiction pursuant to law or agreement and notwithstanding defendants' legal duty under the Railway Labor Act to pursue and exhaust the remedy of the National Railroad Adjustment Board, defendants unlawfully did, on February 2, 1954, authorize by written ballot a strike against plaintiff and unlawfully did, on March 26, 1954, set a strike date as of 6:00 p. m. on March 29, 1954, and have unlawfully threatened, and are now unlawfully threatening, a strike against plaintiff for the purpose of compelling plaintiff to pay defendants' time claims for penalty pay and for other pay not legally enforceable by any proper tribunal and in violation of defendants' contractual agreement and statutory duties to pursue and exhaust the remedy provided by the contract and the Railway Labor Act.

12. If defendants refuse to operate Terminal switch engines and otherwise perform their customary work in passenger and freight switching service for Terminal and establish and maintain picket lines on and around Terminal property, other employees of plaintiff who are members of other crafts, including switchmen, machinists, mechanics, maintainers, mail and baggage handlers, carmen, inspectors, telegraphers and red caps, will refuse to cross said picket lines and to perform their customary work for Terminal, and employees of the 12 railroads using the facilities of Terminal will refuse to cross said picket lines and to perform their customary work for such railroads with the result that passenger, baggage, and freight service and United States mail service into and out of Kansas City will be disrupted and paralyzed. The movement of passenger, mail and baggage, and freight cars and engines in interstate commerce, and the movement of United States mail, will be seriously impaired,

and this section of the country will be deprived of essential transportation and mail service, by reason of all of which defendants' threatened strike, if not enjoined, will cause irreparable injury to plaintiff's operation and to the uninterrupted flow of interstate passenger and freight traffic and of interstate mail, for all of which the remedy at law is wholly inadequate.

WHEREFORE, plaintiff prays this Court:

1. To issue its permanent injunction: (a) enjoining and restraining defendants Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., individually and as representatives of B. L. F. & E. and of Roanoke Lodge No. 692 thereof and of the class of firemen, engineers, hostlers, and hostler helpers employed by Terminal similarly situated, and each of said other defendants individually, and their agents, servants, attorneys, employees, and all persons in active concert or participation with them, from attempting to enforce the payment of the aforesaid time claims by: (1) calling, ordering, instructing, recommending, precipitating, encouraging, inducing, permitting, or engaging or participating or taking any part in, in whole or in part or in any wise or manner, a strike against Terminal or on its property and a picket line on or around its property; or (2) slowing down, interfering with, or affecting in any wise or manner the orderly and prompt continuance of work on said property; (b) directing defendants Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., individually and as representatives of B. L. F. & E. and of Roanoke Lodge No. 692 thereof, and their agents, servants, attorneys and employees, forthwith to instruct, and to take all action necessary to insure that such instructions are executed, all members of B. L. F. & E. employed by Terminal and all of such employees it represents to refrain

from and not participate in any wise or manner in a strike or a work slow down against Terminal or a picket line on or around its property for the purpose of attempting to enforce the payment of the aforesaid time claims and to continue in an orderly and expeditious manner their usual employment as firemen, engineers, hostlers, and hostler helpers.

2. For such other and further relief as to this Court seems proper.

LATHROP, RIGHTER, BLACKWELL & PARKER,
HORACE F. BLACKWELL, JR.,
SAM D. PARKER,
*Attorneys for Plaintiff.*

(Verification omitted.)

**ANSWER.**

Defendants for their answer to the amended petition herein:

1. Admit the allegations of Paragraphs 1, 2 and 3 of the amended petition.

2. Admit that on March 31, 1951, plaintiff and B. L. F. & E. as collective bargaining representative for all firemen, engineers, hostlers and hostler helpers employed by plaintiff executed a collective bargaining agreement in Kansas City, Missouri, as provided for and by the Railway Labor Act and that subsection (c) of Section 2 of Article VII of said agreement is as follows:

> (c) The procedure outlined in Paragraphs (a) and (b) shall govern in appeals taken to each succeeding officer. Decision by the highest officer designated to handle claims and grievances, shall be final and binding unless within sixty days after written

notice of the decision of said officer he is notified in writing that his decision is not accepted. All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved. It is understood, however, that the parties may by agreement in any particular case extend the six months period herein referred to.

but deny each and every other allegation of Paragraph 4 of the amended petition.

3. Admit that on April 14, 1953, plaintiff and B. L. F. & E. executed a modification of the agreement described in Paragraph 4 of plaintiff's petition, a copy of same being attached to this answer, marked "Exhibit A" and made a part hereof, and deny all other allegations of Paragraph 5 of the amended petition.

4. Admit that certain claims have been and are being filed against plaintiff in the manner in Paragraph 6 of the amended petition stated, but deny all other allegations of Paragraph 6 of the amended petition.

5. Admit that certain claims were presented to the highest officer of plaintiff designated to handle them in the manner in Paragraphs 7, 8 and 9 of the amended petition described, and by him declined, and that notice of disagreement with such declination was given to plaintiff, but deny all other allegations of Paragraphs 7, 8 and 9 of the amended petition.

6. Deny the allegations and legal conclusions in Paragraph 10 of the amended petition contained.

7. Admit that on February 2, 1954, a strike ballot was spread and that defendants did authorize a strike on ac-

count of certain time claims and other matters, and that on March 26, 1954, a time as of 6:00 p.m. on March 29, 1954, was set for strike, but state that defendants have at all times been willing to comply with all orders of the National Mediation Board with respect to said strike, and deny all other allegations of Paragraph 11 of the amended petition.

8. Deny the allegations of Paragraph 12 of the amended petition.

9. State that this Court has no jurisdiction of an action to prevent a strike in interstate commerce by rail, and that exclusive jurisdiction therein is in the National Mediation Board and other tribunals established by federal law.

10. State that this Court has no jurisdiction over an action relating to the interpretation or application of a collective bargaining agreement under the Railway Labor Act, and that plaintiff is not entitled to any relief relating to the interpretation or application of this agreement.

11. State that plaintiff has failed to exhaust its administrative remedies before resorting to judicial action, has declined the proffered services of the National Mediation Board, and has failed to seek action by the National Railroad Adjustment Board in the premises. No reason exists why said administrative remedies are inadequate.

12. State that in past controversies under the collective agreement between the parties and under prior agreements containing substantially similar terms as to claims, plaintiff has agreed to and acquiesced in the procedure followed by defendants herein in prosecuting claims, and therefore has waived any right to insist on the procedure in the petition described and is estopped to assert that same is required.

13. State that prior to the filing of plaintiff's complaint herein the services of the National Mediation Board were invoked with respect to the claims in the petition described, that the National Mediation Board was willing to accept jurisdiction in the premises, and that plaintiff is not entitled in equity and good conscience to judicial relief in the premises.

14. State that the strike in the amended petition described is in no wise illegal or unlawful, and that an injunction against same would deprive defendants of rights of free speech in violation of Articles I and XIV of the Amendments to the Constitution of the United States and Article I, Section 8, of the Constitution of Missouri, would constitute involuntary servitude in violation of Article XIII of the Amendments to the Constitution of the United States, and a deprivation of liberty and property without due process of law in violation of Article XIV of the Constitution of the United States and Article I, Section 10, of the Constitution of Missouri.

WHEREFORE, having fully answered, defendants pray that plaintiff's petition be *dismissed*, with allowance to defendants for costs, expenses, and attorneys' fees on account of the restraining order issued herein.

BLACKMAR, NEWKIRK, EAGER, SWANSON & MIDGLEY,
RALPH M. JONES,
CHARLES B. BLACKMAR,
*Attorneys for Defendants.*

HAROLD C. HEISS,
RUSSELL B. DAY,
*Of Counsel.*

**DEPOSITION BY DANIEL P. LOOMIS, CHAIRMAN, WESTERN CARRIERS' CONFERENCE COMMITTEE.**

DANIEL P. LOOMIS, called as a witness on behalf of the defendants, having been first duly sworn, was examined, and testified as follows, to-wit:

DIRECT EXAMINATION BY MR. BLACKMAR.

* * * * *

(5) Q. In both of these agreements clauses were written into the agreements covering limitation on time claims, were they not?

Mr. Blackwell: I object to the question. The agreement is the best evidence.

Mr. Blackmar: Let him proceed to answer the question.

Mr. Blackwell: Go ahead and answer it for the record.

The Witness: A. Yes, time limitation rules were (6) written in both agreements. There are differences between them.

Mr. Blackmar: Q. What had been the situation prior to that time with regard to limitation on time clauses?

Mr. Blackwell: I make the same objection to that question, and the further objection that it is completely irrelevant and immaterial and doesn't tend to prove any issue in this case. I am making these objections for the record.

The Witness: Yes, I will answer.

Mr. Blackwell: It will be ruled on by the court later.

The Witness: By and large, I would say there were no time limitations. There were agreements on individual railroads, on some individual railroads of certain kinds for time limitations. There was no national rule. On a good many railroads there were no time limit rules.

Mr. Blackmar: Q. Were national agreements in ef-

fect? A. I would have to inquire what you mean by national agreements?

Q. Well, agreements negotiated on the national basis between associations representing the carriers and the various unions? (7) A. On various matters there are national agreements, such as wages, and some on different types of rules. There is no complete national agreement of any kind.

Q. Your testimony is that there was no national agreement of any kind relating to time claims in that such agreements as there were referring to the limitation on time claims were contained in various local agreements? A. That is correct, prior to 1947.

* * * * *

(12) Q. Then in 1947 notices were served by carriers again for rules changes, were they not? A. Yes.

Q. Were notices served suggesting a change in rules as to limits on time claims in the following language:

> "Decision by the highest officer designated to handle disputes shall be final and binding unless within sixty days after written notice of (13) such decision the said officer is notified in writing that his decision is not accepted. All claims or grievances involved in such decisions shall be barred unless within six months from date of said officer's decision proceedings are instituted before a tribunal of competent jurisdiction established by law or agreement."

Mr. Blackwell: May it be understood that my objection goes to that question and similar questions along this line?

Mr. Blackmar: Surely.

The Witness: A time limit rule or proposal was served by at least most of the railroads that did include such a provision.

Q. And that provision was discussed in the negotiation in which you were acting on behalf of the Western Railroads? A. Yes.

Q. And that applied to both of the two groups of railroad unions that we have just described, did it not? A. It did.

Q. At that time did you hold a power of attorney from the Kansas City Terminal Railway authorizing you to conduct negotiations on its behalf? (14) A. Again I have checked notes and as far as the Brotherhood of Locomotive Engineers and Firemen are concerned, I haven't checked as to the other organizations, but the agreement of August 11th shows authority for the Kansas City Terminal.

* * * * *

(23) Q. Now, you gave some testimony before an emergency board at Dallas, Texas on February 27th and 28th, 1950, did you not? A. That is correct.

Q. I will show you the document that has been marked Defendants' Exhibit 2 and ask you if you can (24) identify that as a transcript of your testimony given there?

* * * * *

Q. Now, at that time you testified with regard to the meaning of the time limitations claims as contained in the December 12, 1947 agreement with the ORC and the BRT and also in this 1948 agreement, Defendants' Exhibit 1, did you not? A. I certainly testified with respect to the time limit rule contained in both of the agreements referred to and I also testified as to the carriers' interpretation of the time limit rule. That is, I probably should say my own interpretation.

Q. And at that time you gave an interpretation of the phrase contained in Section 17 of Defendants' Exhibit

1, "tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved"? (25) A. The testimony is a little mixed up in places as to whether I was talking about the ORC or BRT agreement or the BLE, BLF&E or SUNA agreement. There was cross examination by different representatives, some on one agreement and some on another.

Q. Here is a question and answer referring to it, page 841 of the transcript, the question asked:

> "Q. Now, is it your testimony that the 4(C) of the Conductors and Trainmen's agreement involving proceedings is subject to the same interpretation placed on the rule for the Engineers and Firemen? A. I think they are substantially the same.
>
> Q. Will you point out—strike that. It is not a fact, Mr. Loomis, that you attempted to get the Conductors and Trainmen Committee to agree to include in the Conductors' and Trainmen's rule that part reading 'Before a tribunal having jurisdiction pursuant to law or agreement'? A. Yes; the exact proposal was 'before a tribunal of competent jurisdiction established by law or agreement.'
>
> Q. Now, when you signed the agreement, the organizations would not agree to put that in, is that not a fact? (26) A. That is correct.
>
> Q. Now, then, that being true, how do you attempt now to interpret that agreement to mean that? A. Well, the organizations' objection to putting it in was that they were fearful that that might require them to submit all cases to the adjustment board or to arbitration, might rule out the possibility of the steps leading to an emergency board."

Were you asked those questions and did you give those answers at that time?

* * * * *

The Witness: A. I was asked those questions and (27) gave those answers.

Q. And in that testimony you expressed a conclusion that Section 4(C) of the Conductors' and Trainmen's agreement was subject to the same interpretation placed on the rule for the Engineers and Firemen, did you not? A. Well, what I said was, "I think they are substantially the same."

* * * * *

(28) Q. Was there testimony at that time relating to whether or not the spreading of a strike ballot would constitute the institution of proceedings before an appropriate tribunal? A. Yes.

Q. Did you express a conclusion on that point? A. Yes, I think I expressed the view that the National Railroad Adjustment Board, a special adjustment board, an arbitration board, and the spreading of a strike ballot and an emergency board constituted a tribunal or proceedings under the rule, in my opinion, at that time.

Q. I believe you expressed the conclusion that labor organizations might be guilty of laches if it spread a strike ballot and then not do anything about it? A. I think I did.

Q. And you were asked questions—I will give you this to read so that you can follow me:

> "Q. Now, would you say now that your letter of this date includes cases that if we notify them of the proceedings and mediation and emergency boards, would you not interpret your letters as you have there to include taking the case where we go into a strike ballot and (29) mediation and emergency board? A. I think when you invoke mediation those are proceedings.
>
> Q. Would the fact of putting it in strike ballot and getting mediation, would that constitute proceedings? A. I think I would be inclined to con-

cede that point, with one exception, if you spread a strike ballot, then let it ride and didn't do anything about it, then I think you would be guilty of laches.

Q. But where we have put out the ballot and proceed with it and go into mediation, you would hold that that constituted proceedings? A. I would."

* * * * *

**(33)** Q. Now, just to complete the record of the conclusions that you expressed at that time, I will ask you if the questions were asked you as follows and if you made answers as follows:

"Q. Mr. Loomis, I direct your attention, please, sir, to Section C(2) of the December 12, 1947 agreement, which appears as Carriers' Exhibit 27 (d), on Page 5 of that document. Before you arrived here, some point has been made that this agreement does not contain some phraseology 'tribunal provided by law or agreement,' or words to that effect, which does appear in Section 17 of the August 11, 1948 agreement, Engineers and Firemen, and some stress has been laid on the proper interpretation of the word 'proceedings,' in this Section C(2) of the December 12, '47 agreement, and some argument has been made as to what would constitute instituting proceedings under Section C(2) of the December 12, 1947 agreement. Will you please comment on the proper interpretation of that provision of the agreement?"

**(34)** Then I presume this is the answer:

"I think our understanding of the word 'proceeding,' the institution of proceedings covered any of a number of things. Might be the filing of a submission with the National Railroad Adjustment Board, an agreement to arbitrate, an agreement to have a special referee on the property concerned, the spreading of a strike ballot, and an appointment of an emergency board. That, I think, would be the general scope of the institution of proceedings. We had proposed the

language that does appear substantially in the Engineers' and Firemen's agreement. Proceedings are instituted before a tribunal of competent jurisdiction established by law or agreement. In the conference the organizations feared that that was committing them absolutely to the use of the adjustment board or of arbitration, and the language agreed on proceedings instituted by the employee or his duly authorized representative, we left out the provision about tribunal of competent jurisdiction so as to include emergency board proceedings or other agreement for handling to dispose of the dispute. Actually, I think under the Engineers' and Firemen's Agreement (35) that an emergency board is likewise a tribunal of competent jurisdiction.

"Q. Mr. Loomis, would you consider—"

I will omit that question. The question that I have previously read you were asked and you did answer subject to objection.

Mr. Blackwell: I will object to that question on the grounds heretofore made.

The Witness: A. I was asked that question and I expressed that view at that time.

* * * * *

(42) Mr. Blackmar: Q. Well, we have another question about the Texas testimony. This question:

"Q. Did the representatives of this particular Brotherhood in that proceeding, with reference to the word 'proceeding,' contend that that was left unqualified because of the variety of choices of procedure which the committees might exercise after the highest designated officer had rendered his decision declining the claim? A. I think that is right.

Q. And one of the contentions was that it may be referred to the chief executive for handling by him or an assigned officer, may be included in a strike ballot, may become subject to the jurisdiction of the

National Mediation Board, may become subject to the supervision of the First Division, National Railroad Adjustment Board, they made those conditions there with reference to the terms of the proceedings? (43) A. At varied times. In fact, at one time during the negotiations there came up the question of possibly writing in something in some way to cover an appeal to the grand lodge board of appeals, or writing in something to cover handling by grand lodge officers. The final conclusion, however, was not to write in any of that and that in the case of handling by grand lodge officers that that could be worked out either by the general chairman and the railroad or by the grand lodge officer and the railroad to arrange for those conferences and for an extension of any time limit to permit that handling."

Were those questions asked and those answers given?

Mr. Blackwell: Same objection.

The Witness: A. Those questions were asked and I gave those answers.

Mr. Blackmar: Q. All right, sir. One question with respect to the time limitation provisions antedating the 1948 agreement, that is the carriers' proposals, what was the purpose of the carriers in proposing that limitation on claims? A. The main purpose of the carriers in proposing (44) a limitation on claims was to set up a reasonable time in which claims should be handled or deemed abandoned and to get rid of stale claims.

Q. That is, to bring— A. To provide a statute of limitations.

Q. That is, to bring about a situation where the carrier could tell what claims were outstanding against it and what claims were not? A. That is correct, to have a period after which the carrier knew the claims were barred and were dead.

* * * * *

CROSS EXAMINATION by MR. BLACKWELL.

* * * * *

(47) Mr. Blackwell: Q. Do you now entertain the view that mediation is a proceeding under the language of the National Firemen's agreement of August 11, 1948? A. No.

Q. Were your reasons for that change in view of those that you have expressed? A. Yes.

Mr. Blackwell: I think that is all.

RE-DIRECT EXAMINATION by MR. BLACKMAR.

Q. Now, what you just testified to, you are expressing a conclusion that you have reached as to the meaning of the amendments of 1934 of the Railway Labor Act? A. That is correct.

Q. You are not saying that it is your understanding (48) that it was the intention of the 1948 agreement to make any such change? A. Well, let me put it this way: The 1948 agreement was intended to permit whatever steps were open to the organizations under the Railway Labor Act.

Q. I see. A. I think its application depends on the construction of the Railway Labor Act.

* * * * *

**TELEGRAMS EXCHANGED BETWEEN KANSAS CITY TERMINAL RAILWAY CO. AND NATIONAL MEDIATION BOARD.**

WESTERN UNION

E. C. Thompson, Secretary
National Mediation Board
Washington D. C.

February 11, 1954
Kansas City, Mo.

Request invocation of services National Mediation Board under Section 5 of the Railway Labor Act account threatened work stoppage by Brotherhood of Locomotive Firemen and Enginmen Kansas City Terminal Railway.

Our position is that issues 1, 2 and 3 on strike ballot are proper cases for National Railroad Adjustment Board.

Services of National Mediation Board requested to preserve status quo by the parties.

Regular forms to follow by mail.

C. E. BRETERNITZ
Vice-President

Chge: R. O. Ripley
Building

WESTERN UNION

W. IDA025 DL PD Govt—ID Washington DC 15 Mar 117PME

C. E. Bretenitz, Vice Pres Oprns—
Kansas City Terminal Railway Co KSC

Re exchange correspondence concerning dispute between Kansas City Terminal Railway and Brotherhood Locomotive Firemen and Enginemen in connection with the items covered by Brotherhood's strike ballot dated February 2 1954. The National Mediation Board has docketed application for mediation by carrier on all mediable items in this strike ballot as our case No. A-4448. Attention of both parties is called to provisions of Section Six Railway Labor Act. A mediator will be assigned to

handle promptly. Please acknowledge. Joint Breternitz and Gilbert.

E. C. THOMPSON, Secretary
National Mediation Board

WESTERN UNION

1954 MAR 26 PM 4 05

Washington DC 26 435 PME
C. E. Breternitz VP Operations
Kansas City Terminal Railway KC

Re strike date set by BLF&E on Kansas City Terminal Railway for Six PM Monday March 29th National Mediation Board urges carrier to immediately enter conferences with Brotherhood representative on all matters covered in strike ballot including time claims. If carrier agreeable to this procedure Board also requests organization to postpone strike date pending such negotiations. Please acknowledge and advise. Joint Breternitz, Gilbert and Lane.

E. C. THOMPSON, Secretary
National Mediation Board

WESTERN UNION

March 29, 1954

E. C. Thompson, Secy.,
National Mediation Board
Washington, D. C.

Procedure suggested your wire March 26, Kansas City Terminal Railway, acceptable to BLF&E but since carrier has obtained court restraining order against strike set for 6:00 PM March 29, 1954 same is being recessed in deference thereto.

H. E. GILBERT

CHG BLF&E 318 Keith Bldg
10:30 AM SCP: CG

**PERMANENT INJUNCTION ENTERED BY CIRCUIT COURT OF JACKSON COUNTY, MISSOURI.**

Now this cause, by agreement of all of the parties hereto, having come on for final hearing on plaintiff's amended petition for a permanent injunction and defendants' answer thereto, and the Court, having read and considered the pleadings and having heard and considered the evidence offered by all the parties and the arguments of counsel, does hereby find all of the issues in favor of the plaintiff and against the defendants.

It is therefore ORDERED, ADJUDGED AND DECREED that defendants Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., as representatives of and for the Brotherhood of Locomotive Firemen and Enginemen (hereinafter called B. L. F. & E.) and of Roanoke Lodge No. 692 thereof and of and for the class of firemen, engineers, hostlers and hostlers helpers employed by plaintiff similarly situated, and the said Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., individually and each of the other defendants herein individually, and all of their agents, servants, attorneys, employees and all persons in active concert or participation with them, be and they hereby are perpetually enjoined and restrained from enforcing or attempting to enforce the payment of any claims for penalty pay for the violations or alleged violations of any of the provisions of the collective bargaining agreement between plaintiff and B. L. F. & E., dated March 31, 1951, as heretofore modified, by calling, ordering, instructing, recommending, precipitating, encouraging, inducing, permitting, or engaging or participating or taking part in, in whole or in part or in anywise or manner, any strike against plaintiff or on plaintiff's property and any picketing or picket line in or around plaintiff's property and any slow down or interference with, in anywise or manner, the

orderly and prompt continuance of work on plaintiff's property; and

It is further ORDERED, ADJUDGED AND DECREED, that the said defendants Manion, Landes and Dibal, individually and as representatives of and for B. L. F. & E. and of Roanoke Lodge No. 692 thereof, and their agents, servants, attorneys, and employees, be and they hereby are ordered and directed to forthwith instruct, and to take all action necessary to insure that such instructions are executed, all members of the class of plaintiff's employees represented by B. L. F. & E. as collective bargaining representative to refrain from and not participate in anywise or manner in any strike or a work slow down against plaintiff or the establishment or maintenance of any picket line in or around plaintiff's property for the purpose of enforcing or attempting to enforce the payment of any claims for penalty pay for the violations or alleged violations of any of the provisions of the above described collective bargaining agreement as heretofore modified.

It is further ORDERED, ADJUDGED AND DECREED that plaintiff have and recover its costs herein incurred and expended, for which let execution issue.

Dated July 7th, 1955.

/s/ PAUL A. BUZARD,
*Judge.*

**STATEMENT OF POINTS RELIED UPON BY APPELLANTS IN BRIEF FILED IN THE SUPREME COURT OF MISSOURI AS REQUIRED BY RULES OF THE SUPREME COURT OF MISSOURI.**

I.

The Court erred when it enjoined the defendants from striking, or causing a strike, for the purpose of enforcing the settlement of time claims and grievances, the injunc-

tion being based upon the conclusion that the Railway Labor Act forbids employees striking for such purpose. The Railway Labor Act does not take from employees the right to strike over time claims and grievances.

II.

The Court enjoined the defendants from striking or threatening to strike for the purpose of enforcing the payment of employees' time claims, on the ground that the claims are barred by a six-month contractual limitation provision in a collective agreement applicable to those employees. This was error for the reason that the running of the six-months limitation period was stayed by appropriate proceedings instituted within the period allowed by the terms of the agreement.

III.

The Court violated the Federal doctrine of primary jurisdiction vested in administrative tribunals, by granting the plaintiff's prayer for temporary and permanent injunctive relief against defendants' threat of a strike, when the plaintiff had by its own action frustrated the effort of the National Mediation Board to perform its statutory duty of attempting to settle railway labor disputes through mediation and arbitration in the manner contemplated by the Railway Labor Act.

IV.

Plaintiff does not come into court with clean hands, and should be denied the equitable relief which is sought.

## OPINION BY SUPREME COURT, STATE OF MISSOURI.

[STATEMENT OF CASE]

DALTON, P. J.: Action in equity for an injunction to prevent defendants from engaging in a threatened strike. The defendants include certain representatives of a labor union and other employees of plaintiff as hereinafter referred to. After a hearing, a permanent injunction was ordered and defendants have appealed.

Plaintiff (respondent here) is a corporation and common carrier by railroad, engaged in interstate commerce and subject to the Railway Labor Act (45 U. S. C. A., Sec. 151, *et seq.*). It owns and operates various railroad terminal facilities, including engines and tracks for switching and transfer of railroad equipment for various railroads in Kansas City, Missouri and Kansas.

The Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as Brotherhood) is a voluntary unincorporated railroad labor organization and, since March 31, 1951, it has been the collective bargaining representative under the Railway Labor Act for all firemen, engineers, hostlers and hostler helpers employed by plaintiff. Certain named officers of the Brotherhood and all its members as a class were defendants in the action.

[BARGAINING CONTRACT]

On March 31, 1951, plaintiff and the Brotherhood, as collective bargaining representatives for said employees of plaintiff, executed a collective bargaining agreement providing that all claims or grievances by or on behalf of any of the employees involved would be processed by presentation to a designated officer of the carrier and if the claimant were dissatisfied with the decision it could be appealed through to the carrier's highest officer designated to handle

claims and grievances. Subsection 2 of Article VII of said agreement provides:

> "(c) The procedure outlined in Paragraphs (a) and (b) shall govern in appeals taken to each succeeding officer. Decision by the highest officer designated to handle claims and grievances, shall be final and binding unless within sixty days after written notice of the decision of said officer he is notified in writing that his decision is not accepted. All claims or grievances involved in a decision of the highest officer shall be barred unless, within six months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved. It is understood, however, that the parties may by agreement in any particular case extend the six months period herein referred to."

On April 14, 1953, this collective bargaining agreement was amended by the addition of what is referred to as the "no new work rule." The amendment provides that engineers, firemen and hostlers would be given no new work after completing a day's work of eight hours, except that they might be required to finish the work they were performing at the end of the eight hour day, and that they would also be expected to work overtime in the event of an emergency.

[Disagreement of Parties]

A disagreement arose between plaintiff and its employees as to the meaning of this rule and claims were filed by employees and prosecuted by the Brotherhood for penalty pay for overtime and for pay for other work based upon alleged violations of the agreement by plaintiff. By June 26, 1953, a total of 100 time claims based upon violation of the "no new work rule" had been filed and

four time claims based upon other rules of the collective bargaining agreement, these claims were all rejected by plaintiff's highest designated officer on September 25, 1953. By September 6, 1954, a total of 860 engineers' time claims and 864 firemen's time claims for penalty pay based upon alleged violations of the "no new work rule" had been filed against plaintiff and denied by its highest designated officer. As of November 1, 1954, a total of 2183 time claims in the amount of $54,117.48 had been filed against plaintiff. These claims were declined by plaintiff's designated officer and notice of disagreement with such declination was given to plaintiff.

It was stipulated between the parties, as follows:

> "Payment has been made for all straight time worked by the employees for or on whose behalf claims herein involved have been presented, and overtime for hours actually worked has been paid at one and one half times the computed hourly rate of the employees. The claims filed are for penalty pay in addition to this. * * * No proceedings to enforce the payment of any of the foregoing time claims have ever been instituted by any defendant or his duly authorized representative before any court or before the National Railroad Adjustment Board or before any tribunal having jurisdiction thereof pursuant to agreement of the parties."

[Strike Vote]

Other evidence tended to show that on February 3, 1954, the Brotherhood circulated among the employees what is termed a "Strike Ballot." The document recited the inability of the Brotherhood to obtain adjustment of (1) Time claims based upon violation of the "no new work rule"; (2) Time claims based upon work "farmed out" by plaintiff to employees of another railroad; (3) Miscellaneous time claims based on other contract provi-

sions and other unsettled matters; and (4) Proposed changes in the terms of the collective bargaining agreement. A copy was furnished to plaintiff. The vote was in favor of striking, if no satisfactory adjustment was made, but no date for a strike was set at the time.

[MEDIATION]

On February 11, 1954, plaintiff invoked the services of the National Mediation Board under the heading "Proposed Rule Changes," under the Railway Labor Act to preserve the status quo, but took the position that issues 1, 2, and 3 on the "Strike Ballot" were proper cases for the National Railroad Adjustment Board. On February 15, 1954, the Secretary of the National Mediation Board advised the President of the Brotherhood that plaintiff had so "invoked the Board's services on the question under the heading 'Proposed Rule Changes'." A federal mediator (Lane) was assigned to mediate the dispute and he appeared in Kansas City on March 23, 1954, to attempt mediation "on all mediable items." Plaintiff refused to grant a conference to defendants' representatives to discuss time claims in mediation and contended that these were not mediable matters. The Brotherhood offered, as indicated above, to attempt to settle both contract changes and time claims and maintain the status quo if the Board would take jurisdiction of the entire dispute, but notified Mediator Lane that, if the time claims were not included in the mediation conferences, a strike date would be set. Thereafter, the Brotherhood set a date for a strike and notified the National Mediation Board of this action. The National Mediation Board communicated with both parties and requested that they immediately enter into conferences on the time claims as well as on the rule changes, and that the threatened strike be deferred. The Brother-

hood indicated its agreement, but plaintiff reiterated its claim that the time claims were not mediable matters and, ultimately, advised the National Mediation Board that a restraining order had been obtained in the present case. The Board took no further action.

[EMPLOYER'S CONTENTIONS]

Plaintiff in its amended petition alleged that neither the Brotherhood, as representative of said employees, nor any employee defendant individually "instituted any proceedings before a tribunal having jurisdiction pursuant to law or agreement of the claims involved"; and that within 60 days after the claims were finally disallowed, they were barred by the collective bargaining agreement; and that defendant's strike to enforce these claims was an unlawful breach of the said agreement. Plaintiff further alleged that "Independent of and apart from the agreement, the Railway Labor Act imposes upon defendants, and each of them, the affirmative duty to pursue and exhaust the administrative remedy available to defendants under said Act which required the orderly prosecution of said time claims before the National Railroad Adjustment Board, the only tribunal having jurisdiction under the Act to determine the merits of these time claims, and precludes a strike by defendants to enforce these time claims." Defendants denied this allegation as a legal conclusion.

Plaintiff further alleged that the strike was unlawfully threatened "against plaintiff for the purpose of compelling plaintiff to pay defendants' time claims for penalty pay and for other pay and legally enforceable by any proper tribunal and in violation of defendants' contractual agreement and statutory duties to pursue and exhaust the remedy provided by the contract and the Railway Labor Act." In effect plaintiff charged that defendants had unlawfully

breached their contractual and statutory obligations to plaintiff by calling a strike against plaintiff to enforce the payment of the time claims against it.

[UNION'S CONTENTIONS]

Defendants admitted a strike ballot was spread and that defendants authorized a strike "on account of certain time claims and other matters," but alleged that "defendants have at all times been willing to comply with all orders of the National Mediation Board with respect to said strike." Defendants further alleged that the Circuit Court was without jurisdiction to prevent a strike in interstate commerce; that it had no jurisdiction over an action relating to the interpretation or application of a collective bargaining agreement; that exclusive jurisdiction was vested in the National Mediation Board and other tribunals established by federal law; that plaintiff had failed to exhaust its administrative remedies; that plaintiff had refused the proffered services of the National Mediation Board; that plaintiff had failed to seek action by the National Railroad Adjustment Board; that "prior to the filing of plaintiff's complaint herein the services of the National Mediation Board were invoked with respect to the claims in the petition described; that the National Mediation Board was willing to accept jurisdiction in the premises * * *"; and that plaintiff was entitled to no relief in equity.

[TRIAL COURT ORDER]

The judgment entered by the trial court provided:

"* * * that defendant Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., as representatives of and for the Brotherhood of Locomotive Firemen and Enginemen (hereinafter called B. L. F. & E.) and of Roanoke Lodge No. 692 thereof and of and for the class of firemen, engineers, hostlers and hostlers' helpers employed by plaintiff similarly situated, and the said

Keith L. Manion, M. F. Landes, and J. M. Dibal, Jr., individually and each of the other defendants herein individually, and all of their agents, servants, attorneys, employees and all persons in active concert or participation with them, *be and they hereby are perpetually enjoined and restrained from enforcing or attempting to enforce the payment of any claims for penalty pay for the violations or alleged violations of any of the provisions of the collective bargaining agreement* between plaintiff and B. L. F. & E., dated March 31, 1951, as heretofore modified, *by calling*, ordering, instructing, recommending, precipitating, encouraging, inducing, permitting, or engaging or participating or taking part in, in whole or in part or in anywise or manner, *any strike* against plaintiff or on plaintiff's property and any picketing or picket line in or around plaintiff's property and any slow down or interference with, in anywise or manner, the orderly and prompt continuance of work on plaintiff's property * * *" (Italics ours.)

[JURISDICTION OF APPEAL]

We must first determine whether this Court has jurisdiction of this appeal. Plaintiff-respondent has moved to transfer the case to the Kansas City Court of Appeals on the ground that jurisdiction is exclusively vested in that court and this Court is without jurisdiction.

Appellants say the appeal presents three questions for decision: (1) the right of plaintiff to invoke the equity jurisdiction of the court in the face of an available and unused administrative remedy established by the Congress as a means of preventing strikes by railway employees; (2) whether the time claims denied on September 25, 1953, by plaintiff's "highest officer designated to handle claims and grievances," became barred on March 26, 1954 by reason of the six month contractual limitations provision in a collective agreement applicable to the employees; and (3) "whether the Congress intended to take from the em-

ployees of the railway industry, when it enacted the 1934 amendments to the Railway Labor Act, the right to strike when accumulated time claims and grievances become a source of dispute between a carrier and its employees." As to this last point, appellants say, "The issue concerns the settlement of a grievance concerning overtime work, in which claims for money may be quite incidental to the substance of the grievance." Appellants further insist that "the issue before the court turns upon the interpretation of the Railway Labor Act," and say (1) that the Railway Labor Act does not take from employees the right to strike over time claims and grievances; and (2) that the strike was not a breach of the contract.

The assignments of error in appellants' statement of points and authorities are (1) that the court erred when it enjoined the defendants from striking, or causing a strike, for the purpose of enforcing the settlement of time claims and grievances"; (2) the court erred in holding "the claims barred by a six month contractual limitation provision" for the reason that "the six months limitation period was stayed by appropriate proceedings instituted within the period allowed by the terms of the agreement"; (3) that the decision of the trial court is erroneous and "inconsistent with principles of equity jurisprudence to grant the extraordinary remedy of injunction to a party who has disregarded the Federal doctrine of primary administrative jurisdiction and, in doing so, has prevented the defendants from having the remedy available through mediation, arbitration and emergency board proceedings provided by the Railway Labor Act" (the theory being that plaintiff has by its own action frustrated settlement through mediation and arbitration); and (4) that the court erred in not applying the "clean hands" doctrine of equity against the plaintiff.

Appellants insist that we have jurisdiction of the appeal on the ground (1) that the amount involved exceeds $7500; (2) that "the case involves the validity of authority exercised under the laws of the United States"; and (3) that "the case draws into question the construction of the Fourteenth Amendment of the Constitution of the United States and the Supremacy clause contained in Article VI of the Constitution of the United States."

[U. S. CONSTITUTION NOT INVOLVED]

Considering the last point first, it has been noted that no assignment of error calls for the construction of any article of or any amendment to the Constitution of the United States and, for that matter no article, section or amendment of the Constitution of the United States is cited or referred to under appellants' statement of points and authorities. Since no such issue is presented, the case is not one "involving the construction of the Constitution of the United States" and we do not have jurisdiction on that ground. *City of St. Louis v. Butler,* 358 Mo. 1221, 219 S. W. 2d 372, 379.

[JURISDICTIONAL AMOUNT]

In support of their contention that the amount involved exceeds $7500, appellants insist that the amount in dispute is the amount of the time claims; and that the Court should take judicial notice that the strike on plaintiff's railroad would involve a loss of more than $7500. Appellants further say that "plaintiff seeks an injunction against the defendants' attempt to enforce $54,000 worth of time claims" by striking; that "if plaintiff is successful, then the record shows that there would be no possible remedy still available to defendants as to at least $17,000 worth of

claims"; that, if plaintiff's position (that the only tribunal having jurisdiction over these claims is the National Railroad Adjustment Board) is sustained, then these claims would be forever barred; that "the suit seeks to enjoin defendants individually from striking in order to attempt to obtain as adjustment of the claims in issue"; that "the whole reason for this suit is that the appellants claim that respondent owes them money for breach of contract"; and that "the question here is how appellants may seek enforcement of their claims." Appellants further say "it is patently obvious that respondent stands to gain more than $7500 if it is able to prevent a strike"; and that a brief interruption of respondent's business by a strike "would result in a loss of more than $7500."

As stated, this is an action in equity for an injunction to prevent a strike. The amended petition upon which the cause was tried contains no allegation from which we may determine the pecuniary value to plaintiff of the relief sought, nor the damage to the defendants, should relief be granted, nor vice versa, should relief be denied. The decree granting relief contains no finding with reference to the amount in dispute, nor as to the value of the relief sought and granted. However, it is apparent that the finding and judgment was in no way dependent upon whether the time claims for penalty pay had a pecuniary value in excess of $7500.

The amended petition alleged that defendants and the employees represented "* * * filed, and are now filing, time claims against plaintiff for penalty pay for overtime and for pay for other work to which they claim to be entitled by plaintiff's alleged violation of said agreement. * * * Said employees were paid by plaintiff for the overtime they actually worked at the rate of time and one half. The penalty pay claimed is for time not actually worked at

the rate of an additional day's wage at time and a half." Defendants admitted that such claims had been and were being filed, but denied the other allegations.

No evidence was offered by the parties concerning the pecuniary value of any of these claims; but the facts are stipulated that the claims are not based upon work and labor performed. There was no evidence that the pecuniary value of the claims involved exceeded $7500, and there was no evidence as to the money value to plaintiff of the relief sought or of the loss to defendants if the relief were granted, or vice versa should relief be denied. The well established rule is that "where our jurisdiction is invoked on the basis of the amount in dispute and a money judgment is not sought, then such amount must be determined by the value of the relief to plaintiff, or of the loss to defendant, should the relief be granted, or vice versa, should relief be denied * * * The amount in dispute cannot be left to speculation or conjecture but must affirmatively appear from the record in the cause to be in excess of $7500." *Frank Schmidt Planing Mill Co. v. Mueller,* 317 Mo. 466, 147 S. W. 2d 670, 671; *Superior Press Brick Co. v. City of St. Louis,* Mo. Sup. 152 S. W. 2d 178, 183. Plaintiff-respondent invoked the jurisdiction of the trial court to obtain an injunction and prevent the proposed strike. No other relief was asked. The right to relief by injunction depended upon whether appellants' contemplated strike to enforce the payment of the time claims was legal or illegal. Appellants' manner of enforcement and efforts to enforce the collection of the claims was an issue. The decree only enjoined and restrained the defendants from enforcing or attempting to enforce the time claims for penalty pay by striking. This Court has no jurisdiction of the appeal on the ground that "the amount in dispute, exclusive of costs, exceeds the sum of Seventy five hundred

dollars." *Fred A. H. Garlich Agency Co. v. Anderson,* 284 Mo. 200, 223 S. W. 641; *Stewart v. Stewart,* Mo. Sup., 269 S. W. 2d 49, 51; *Frank Schmidt Planing Mill Co. v. Mueller, supra,* 147 S. W. 2d 670, 671; *Superior Press Brick Co. v. City of St. Louis, supra,* 152 S. W. 2d 178, 183; *Holland v. City of St. Louis,* Mo. Sup., 262 S. W. 2d 1, 4.

[AUTHORITY UNDER FEDERAL LAW]

Does the appeal involve "the validity of * * * any authority exercised under the laws of the United States"? Appellants' theory is that "the case involved the validity of the action of the National Mediation Board, which is an agency of the United States, and therefore involves the validity of authority exercised under the laws of the United States." Respondent, on the other hand, concedes that appellants' contention (that respondent was required to exhaust its administrative remedies) requires a construction and interpretation of the Railway Labor Act, but respondent claims the appeal raises no question of the validity of the Act or of any authority exercised by the National Mediation Board. Appellants admit that the National Mediation Board "has no authority to force settlement, but rather proceeds by attempting to persuade the parties to reach a voluntary agreement"; that respondent refused to discuss the time claims in mediation; and that "the National Mediation Board ceased its mediatory efforts." Appellants argue that the appellate court "will necessarily have to reach a decision as to the validity of the authority which the National Mediation Board has sought to exercise"; and that respondent "must necessarily maintain its contention that the National Mediation Board has no authority over time claims," hence appellants say the appeal "draws directly into question an authority exercised under the laws of the United States."

The dispute was never finally submitted to the National Mediation Board; the respondent never agreed to submit the time claims to mediation, while appellants refused mediation unless the time claims were admitted; hence no action was taken by the National Board of Mediation and no authority exercised by it is called in question on this appeal. Appellants have cited *Beekman Lmbr. Co. v. Acme Harvester Co.*, 215 Mo. 221, 114 S. W. 1087 and say it is "exactly parallel to this case." In that case a United States District Court had entertained bankruptcy proceedings against the defendant and had enjoined the plaintiff from prosecuting elsewhere its claim on an account for lumber sold to defendant. The plaintiff nevertheless proceeded with its suit in the Circuit Court of Jackson County, and defendant pleaded the injunction decree in abatement. The Supreme Court of Missouri held that it had jurisdiction over the appeal, on the ground that the federal court was exercising authority under the laws of the United States and that the validity of the federal proceedings was in issue. We think the case has no application here, where the differences between the parties were never finally submitted to mediation, and the National Mediation Board has exercised no authority because the parties refused to submit their differences to mediation, therefore, the Board ceased its mediatory efforts and abandoned the controversy. No authority exercised by the National Mediation Board under the laws of the United States is called in question in this proceeding. *Kettelhake v. Am. Car & Foundry Co.*, 243 Mo. 412, 417, 147 S. W. 479; *Sound Investment & Realty Co. v. Griffin*, Mo. App., 205 S. W. 2d 257, 260. It further appears that neither of the parties have submitted the time claims to the National Railroad Adjustment Board and no foundation has been laid for its jurisdiction and none has been exercised.

Appellants in their reply brief say that "the issue before the court turns upon an interpretation of the Railway Labor Act" and that the state courts are without jurisdiction to determine the matter, citing *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239 [18 LABOR CASES § 65,694]. If that is true, nevertheless, this Court has no jurisdiction of this appeal. The necessity for an interpretation and application of the terms of a federal statute does not bring the case within the state constitutional provision conferring appellate jurisdiction on this Court on the theory that the validity of authority exercised under the laws of the United States is in question. *Service Purchasing Co. v. Brennan*, Mo. Sup., 32 S. W. 2d 81, 82; *Mitchell v. Joplin Nat. Bank*, Mo. Sup., 201 S. W. 903, 904. And see *Huckleberry v. Mo. Pac. R. Co.*, 324 Mo. 1025, 26 S. W. 2d 980, 988; and *Pashea v. Terminal R. Ass'n. of St. Louis*, 350 Mo. 132, 165 S. W. 2d 691, 696, as to the existence of a federal question.

While the case requires the construction of a contract entered into between the parties and a consideration of the statutes under which the contract was entered into, we find no basis for this Court's jurisdiction on appeal. The cause should be transferred to the Kansas City Court of Appeals.

It is so ordered.

All concur.

**MANDATE JUDGMENT OF SUPREME COURT, STATE OF MISSOURI, TRANSFERRING CASE TO KANSAS CITY COURT OF APPEALS.**

"Now at this day, it appearing to the satisfaction of the Court that the validity of authority exercised under the laws of the United States is not involved herein, that the record does not affirmatively show the amount in dispute, exclusive of costs, exceeds $7,500, and that this Court is therefore without jurisdiction to hear and deter-

mine this cause, the Court doth order that said cause be and the same is hereby transferred to the Kansas City Court of Appeals. (Opinion filed)."

(Certified by Spicer May 31, 1956 as entered April 9, 1956.)

**ORDER OF KANSAS CITY COURT OF APPEALS, DEC. 11, 1956, OVERRULING MOTION FOR REHEARING OR TRANSFER.**

"Now at this day, the court having considered, and fully understanding the Appellants' motion for rehearing or in the alternative to transfer to the Supreme Court doth consider and adjudge that the said motion be and the same is hereby overruled."

**APPELLANTS' APPLICATION FOR TRANSFER OF CASE TO SUPREME COURT, STATE OF MISSOURI.**

Appellant Keith L. Manion, and the other Appellants named in the notice of appeal filed herein, respectfully apply to this Court to order the transfer of this cause from the Kansas City Court of Appeals, for the reason that the case involves questions of general interest and importance which have not previously been decided by this Court.

The opinion of the Kansas City Court of Appeals affirming the judgment of the Circuit Court of Jackson County, herein was filed on November 5, 1956. A copy is attached hereto as Exhibit "A." A motion for rehearing or in the alternative for transfer to this Court was timely filed and was denied by the Kansas City Court of Appeals on December 12, 1956, at which time a modification was made in the opinion. A copy is attached hereto as Exhibit "B." The appeal was originally taken to this Court, and was transferred on jurisdictional grounds, 290 S. W. 2d 63.

The basic facts are stated in the two opinions.

The questions of general interest and importance involved in this case, which have not heretofore been decided by this Court, are as follows:

I. **(a) Does the Railway Labor Act (45 U. S. C. A., Sections 151-160) outlaw or make illegal a strike the object of which is to seek to compel the carrier to adjust claims or grievances, as distinguished from a strike which has as its objective the changing of contract provisions relating to wages, hours and working conditions?**

**(b) Does the Railway Labor Act forbid employees to strike over grievances resulting from the interpretation and application of collective agreements when neither party has sought a decision on the grievances by the National Railroad Adjustment Board?**

The Court of Appeals in its opinion answered this question in the affirmative, holding that a strike for the purpose of enforcing claims and grievances is a violation of the Railway Labor Act. This conclusion was reached in spite of the statement in the opinion "the National Railway Labor Act does not exactly spell out either terminal's or defendant's interpretation." Appellants contend that this holding is in error and that the question should be answered in the negative. At common law a strike over such matters was and is a lawful strike. Nothing in the Railway Labor Act in express terms, or by reasonable implication, modifies the common law rule. Appellants contend therefore that the common law rule remains unchanged.

The opinion of the Court of Appeals makes reference to two cases which discuss a related problem, *Chicago River & Indiana Railroad Company vs. Brotherhood*, 229 F. 2d 926, and *Brotherhood vs. Central of Georgia Railroad Company*, Fifth Circuit, 229 F. 2d 901.* The Courts ruling on these two cases reached diametrically opposite conclusions, and both cases are now in the Supreme Court of the United States on certiorari. There is no other authority on the point, either direct or collateral. A problem which is subject to such a divergence of views as is shown by the opinions above referred to should be the subject of further review.

**II. (a) Does the authority of the National Mediation Board extend to the mediation of disputes over the interpretation and application of collective agreements when such disputes create a "local emergency" which threatenes to interrupt the operation of a carrier engaged in interstate commerce?**

**(b) Is the National Mediation Board a tribunal having jurisdiction pursuant to law or agreement over claims and grievances, so that mediation services are available when presence of such disputes threaten to disrupt commerce?**

Appellants contended in the Court of Appeals and still contend that the National Mediation Board is "a tri-

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* We do not agree with the Court of Appeals that the problem is identical. In both of the cited cases the claims were pending before the National Railroad Adjustment Board. Here neither party asked that Board to act, and so there is no possibility of conflict with its decision. We feel therefore that our case against injunctive relief is a stronger one.

bunal having jurisdiction pursuant to law or agreement" over the claims and grievances in issue and that these were properly presented to the National Mediation Board.

The Court of Appeals in its opinion did not discuss this point. At page 7 of its opinion the Court of Appeals states:

> "The Mediation Board was not vested with adjudicatory powers. It provided mediation services only, and on 'major disputes' alone."

By "major disputes" the opinion refers to disputes over proposals for changing existing contracts, as distinguished from disputes involving the interpretation or application of existing contracts.

That the Court of Appeals is in error in holding that the National Mediation Board has no power or jurisdiction over disputes involving claims or grievances as shown by the language of the statute, 45 U. S. C., Section 155, which states:

> "The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time."

That the National Mediation Board has construed its power as extending to disputes over claims and grievances is shown by reference to its annual reports, which show that on many occasions it has entered into such controversies and has attempted to secure adjustment through mediation. Indeed, the record in this case shows that on a previous occasion the Mediation Board took charge of a dispute which is indistinguishable from this one, and assisted the parties in reaching a voluntary settlement thereof.

Appellants introduced evidence showing the intent of the parties who framed the language of the collective

bargaining agreement here in issue, that proceedings before the National Mediation Board were proceedings before a tribunal having jurisdiction pursuant to law or agreement within the meaning of the agreement.

The record in this case also shows that a very large proportion of the railroads in the country operate under collective bargaining agreements containing the same language that this agreement contained. A decision in this case will serve as a precedent in the construction of almost every railroad collective bargaining agreement now in existence. This shows the great importance of the question of proper construction of the agreement. The opinion of the Court of Appeals is highly unsatisfactory, as a determination on the law in this field for the reason that it does not discuss this vital point at all.

**III. Does a party seeking an injunction against a strike of employees covered by the Railway Labor Act have the duty of exhausting all available administrative remedies before proceeding in court?**

This point was raised in Appellants' brief in the Court of Appeals. The opinion does not discuss the point at all, but the Court of Appeals must necessarily have resolved the point against the Appellants since it affirmed the granting of the injunction.

It is a general principle of administrative law, applied both by the federal courts and by this court, that a party should not seek judicial relief until he has utilized administrative machinery provided by the law to its fullest extent.

The record in the present case shows that as soon as the National Mediation Board was advised that the union representing Appellants set a strike date, the National

Mediation Board communicated with both parties requesting that the strike be postponed and that they immediately enter into conferences over the time claims under its auspices. Appellants indicated that they were willing to enter into these conferences and to postpone the contemplated strike. Respondent Kansas City Terminal Railway refused services of the National Mediation Board, and refused conferences. Instead of doing this, it immediately filed this action and sought and obtained a temporary restraining order.

We do not see how a clearer case of failure to exhaust administrative remedies could be set forth. Had the parties entered into mediation they might have been able to resolve the entire controversy without the need for judicial intervention. We do not see how any one could predict in advance that mediation would be of no value. In providing the National Mediation Board, and of giving it jurisdiction in every case of threatened labor emergency affecting interstate transportation, Congress must have assumed that this Board would be given the opportunity to act. While the Board was acting, there was no emergency which made an injunction necessary. The Court of Appeals apparently assumed, however, that there is no obligation to try the services of the Mediation Board in a case like this one. This is clearly contrary to all the law we have been able to find on exhaustion of administrative remedies.

**IV. May a state court issue an injunction against a strike by employees covered by the Railway Labor Act?**

The Court of Appeals necessarily answered this question in the affirmative by upholding the injunction which was granted.

The Supreme Court of the United States has held, however, that judicial remedies are available in industries governed by the Railway Labor Act only where specifically authorized by the language of the statute. The following quotation from the case of *General Committee of Adjustment vs. M-K-T Railway*, 320 U. S. 323, is in point:

> "In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

The holding of the Court of Appeals that a state court may issue an injunction in a case of this kind seems to be squarely in conflict with the principles stated above, and it is important as a matter of general law that this Court take cognizance of the problem.

## Conclusion.

This case involves important problems affecting the entire transportation industry of the country and all of its employees. The application for transfer should be granted.

Respectfully submitted,

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

## No. 702.

KEITH L. MANION et al., *Petitioners,*

vs.

KANSAS CITY TERMINAL RAILWAY COMPANY,
a Corporation, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

## BRIEF FOR RESPONDENT IN OPPOSITION.

### STATEMENT.

Petitioners seek to review the decision of the Missouri court enjoining a strike called by petitioners in violation of their collective bargaining agreement and the Railway Labor Act. The court below exercised its traditional

power as an equity court to prevent an unlawful strike where the remedy at law was inadequate.

Respondent is a large railroad terminal offering passenger and freight repair, switching, interchange and transfer service to the twelve interstate railroads running into and out of Kansas City, Missouri, freight switching service to 254 industries in the two Kansas Cities, and mail handling to the United States Postal Service. It also operates the Kansas City, Missouri, Union Station affording terminal facilities to the traveling public using 142 passenger trains daily (Tr. 75-98; Pl. Ex. 11, Tr. 81, 87). The disastrous effect of a strike and picket lines upon the public, the railroads themselves, and the many industries served by these railroads, and the consequent disruption of interstate passenger, freight and mail transportation, is undisputed (Tr. 88-90, 92-101, 103-154).

Because of the misstatements and argumentative conclusions not supported by the evidence in petitioners' Statement of the case, respondent deems it necessary to state in detail certain facts contained in the record, only a small fraction of which petitioners have printed in their Appendix B.

There is no evidence to support petitioners' opening statements (p. 4) that petitioners had for many years been aggrieved over Terminal demands for overtime work and that the employees tried to remedy the situation in 1951 and again in 1953.

A complete collective bargaining agreement between Terminal and the Local Union of the B. L. F. & E. was negotiated and became effective on March 31, 1951 (Pl. Ex. 1, Tr. 48, 55), which contains as the fourth attachment thereto an overtime rule known as the "Ninth Hour Rule."

This was an "impractical and impossible rule" from the Terminal's standpoint because it prevented Terminal from effective control in *minimizing overtime* (Tr. 251-2, 254). Terminal, therefore, in 1953, was agreeable to negotiating with petitioners in mediation a settlement of time claims filed by petitioners under this rule so that Terminal "could buy that rule and secure a rule that [it] wanted" (Tr. 254, 260-261).

Ruben Eschler, a Vice-President of B. L. F. & E. (Tr. 215), who represented petitioners in the 1953 negotiation (Tr. 242), admitted that Terminal wanted to get rid of the "Ninth Hour Rule" and obtain a more satisfactory overtime rule (Tr. 242). He was not sure whether Terminal or Mediator MacSwan prepared the new rule "but it was a standard rule and it was finally agreed to put it in the contract" (Tr. 245).

The new rule (known as the "No New Work Rule") so adopted became effective on April 16, 1953, and is set out in Plaintiff's Exhibit 2 (Tr. 48, 55).

On December 21, 1953, petitioners, through their General Chairman Manion, submitted a proposal (Deft. Ex. 16, Tr. 161) to change the "existing agreement." Petitioners wanted to change Article III (Basic Day), Article XII (Discipline and Hearings), Article XXIII (Equipping and Supplying Engines), and to add new Articles XXX (Parking Lot Facilities) and XXXI (Copies of Agreement). (Petitioners' proposal was not, as the petitioners imply, limited to a change in the overtime rule.)

Terminal, on January 19, 1954, served on petitioners (Def. Ex. 22, Tr. 161) its counter proposal for other rule changes (Pl. Ex. 52, Tr. 256-7). After a conference, Terminal and Manion were unable to agree on any of the proposed new rules (Tr. 256-7).

Item 4 of the strike ballot of February 2, 1954 (Def. Ex. 27, Tr. 162) concerned petitioners' proposals for "proper application of the 'No New Work Rule,' electric water coolers on all engines, standard storm windows on all the engines, and various other items."

Article VII, Section 2, of the collective bargaining agreement of March 31, 1951 (Pl. Ex. 1, Tr. 48, 55), governs the handling of claims for time not actually worked. Section 2(c) provides that such claims "shall be barred" if disallowed by the highest officer designated to handle such claims, "unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

After the adoption of the "No New Work Rule" in April, 1953, petitioners, beginning on June 26, 1953, filed claims for penalty pay for alleged violation thereof (Stip. of Facts, Tr. 50). Petitioners admit (p. 4) that Terminal has paid for the actual overtime work done. Petitioners' statement that the employee regarded requests to work overtime as a request to start a second shift is not supported by the evidence. It was stipulated by the parties (Tr. 50) that these were "claims for an additional day's penalty at the rate of time and a half." Violation not only of the overtime rule, but also of certain switching and other rules, was alleged (Stip. of Facts, Tr. 50-51).

Over 100 of these claims were disallowed by Terminal on September 25, 1953 (Tr. 52). By the time of trial, the aggregate of the claims for penalty pay which had been filed and declined on the merits after thorough investigation (Tr. 74-5) (Deft. Ex. 42, Tr. 169-70) was in excess of $54,000.00 (Tr. 53).

These time claims were the subject of conferences and correspondence between Terminal and General Chairmen and Vice-Presidents of the B. L. F. & E. during the summer and fall of 1953 and January of 1954 (Tr. 255, 256) (Deft. Ex. 17, Tr. 161; Deft. Exs. 19-27, Tr. 161, 162; Deft. Exs. 41-46, Tr. 167-70). Terminal and the Union were in basic disagreement over the interpretation of the "No New Work Rule." The issue was whether work begun before, but finished after, the eighth hour was a violation of the rule (Tr. 68-9; Pl. Ex. 2, Tr. 48, 55).

Terminal repeatedly told Vice-President Eschler and General Chairman Manion that its position was that the time claims would have to be submitted for adjudication to the National Railroad Adjustment Board or to a supplemental adjustment board on the property (Tr. 69-70, 229-30), and both refused (Tr. 61, 69-70).

It was stipulated (Tr. 53-4):

> No proceedings to enforce the payment of any of the foregoing time claims have ever been instituted by any defendant or his duly authorized representative before any court or before the National Railroad Adjustment Board or before any tribunal having jurisdiction thereof pursuit to agreement of the parties.

After the Terminal received the strike ballot on February 3, 1954 (Deft. Ex. 27, Tr. 162), the first three items of which included (1) overtime rule claims, (2) claims regarding other crews switching an industry, and (3) miscellaneous time claims, it requested (telegram of February 11, 1954, App. B, p. 51), invocation of services of the national Mediation Board to prevent the strike over the proposed rule changes (Item 4 on the strike ballot), stating specifically that its position was that the items on the strike ballot (Items 1, 2, and 3) with reference to time

claims were proper cases for the National Railroad Adjustment Board.

Petitioners say (p. 5) they promptly advised the Mediation Board they desired the Board to mediate the entire dispute. This is not true. In fact, they *never* asked for mediation of the time claims. Eschler testified (Tr. 236):

> Q. * * * outside of furnishing a copy of the strike ballot, the B. L. F. & E. never invoked the services of the Mediation Board, did it?
>
> A. No.

Petitioners said in their reply brief in the Missouri Supreme Court (p. 20): "The Terminal knows, as well as the appellants know, that it is not consistent with Section 5 of the Railway Labor Act for employees to petition the Mediation Board for its services to aid in resolving a dispute based on grievances."

The Board, on February 15, 1954 (Deft. Ex. 31, Tr. 164), asked petitioners for a statement of their position, and on March 9 (Deft. Ex. 33, Tr. 165-6) petitioners advised that they would not strike if the Board intended to accept jurisdiction with the understanding that all matters in dispute would remain in *status quo* (Deft. Ex. 33 was offered and admitted only for the purpose of showing petitioners' position, not as evidence that the statements made therein are true Tr. 165-6.)

On March 11, the Board wired Terminal (Deft. Ex. 34, Tr. 166):

> C. E. Breternitz, VP Operation 1954 March
> K. C. Terminal Rwy. Co. 11 P.M. 5 17
>
> Re exchange correspondence beginning your telegram February eleventh regarding threatened work

stoppage by BLF&E that organization informs us they served section six notice on you dated December 21, 1953 relative to switch crews working overtime also that you served on January 19, 1954 a six page counter-proposal to eliminate many standard rules contained in other contracts. These appear to be mediable matters. Please wire your statement regarding them.

E. C. Thompson, Secy NMB.

Terminal replied March 12 (Deft. Ex. 36, Tr. 166-7), again stating its position that the proposals for rule changes were mediable matters, but that the time claims were not.

The Board on March 15 advised that it had docketed the application "on all mediable items." (Deft. Ex. 35, Tr. 166-7).

President Gilbert (of the B. L. F. & E.) wired General Chairman Manion March 15 (Pl. Ex. 50, Tr. 241):

CT.CLD460 DL PD = Cleveland, Ohio 15 516 PME =
K. L. MANION =
1408 West 41 St. KSC = 1954 Mar 15 PM 6 37

Following telegram from Mediation Board date quote re exchange correspondence concerning dispute between Kansas City Terminal Railway and Brotherhood of Locomotive Firemen and Enginemen in connection with the items covered by Brotherhood's strike ballot dated February 2, 1954. The National Mediation Board has docketed application for mediation by carrier on all mediable items in this strike ballot as our Case No. A-4448. Attention of both parties is called to provisions of Section Six, Railway Labor Act. A mediator will be assigned to handle promptly. Please acknowledge. Joint Breternitz and Gilbert. Unquote. Understand mediator will be on your property early next week. Please keep this office advised of expiration of time limit on your claims so that if

necessary we can set strike date to force status quo on time claims as well as mediable matters referred to by Mediation Board =

H. E. Gilbert =

It is admitted that the Terminal, at all times, adhered to its position that the time claims were not mediable matters. It is also admitted that petitioners at no time invoked the services of the Mediation Board (Tr. 236) and that "the Mediation Board has no jurisdiction or authority to make either party discuss anything if they refuse." (Tr. 235).

Vice-President Eschler also admitted (Tr. 229) that he was advised by Mediator Lane (assigned to the case by the National Mediation Board, Tr. 220-221) that the Terminal was willing to have the time claims disposed of by a Special Board but that he, Eschler, would not agree.

On March 25 Eschler advised Gilbert (Pl. Ex. 6, Tr. 56, 58) that "one hundred time claims expired under Section 17 today," and requested authority to call a strike at 6:00 p. m., March 29, "on the docket of cases only." (By Section 17 he referred to the time limit provision of the National Agreement, identical to Article VII, Section 2, of the B. L. F. & E., agreement with the Terminal, Tr. 58.)

Petitioners attempt on page 6 to make it appear that the Board proffered its services over the time claims dispute before the restraining order was issued. This is not true.

At 12:30 p. m., March 26 (Tr. 70), Terminal received the following wire (Pl. Ex. 7, Tr. 59):

1954 MAR 26 PM 1207
U D Kansas City, Mo.
(S. WA100) GOVT DL PD-Washington, Mar 26 1141 AME—
C. E. Breternitz, Vice Pres. Operations—
(RTE UD)—Kansas City Terminal Railway Co KSC—

We have advised from Brotherhood of Locomotive Firemen & Enginemen they are setting date for withdrawal of employees represented by that organization on Kansas City Terminal Railway as of 6 P. M., Monday, March 29th. Please furnish any statements you may care to make—

E. C. Thompson Secretary National Mediation Board—

This suit was filed at 1:30 or 1:45 p. m. and the principal defendants were served by 3:30 or 4:00 p. m. (Tr. 71-2).

Not until at 4:30 p. m. (Tr. 73) did Terminal receive the wire from the Mediation Board urging conferences on time claims (App. B., p. 52).

Terminal replied March 27 (Pl. Ex. 10, Tr. 72-5):

Kansas City, Missouri
March 27, 1954

E. C. Thompson, Secretary
National Mediation Board
Washington, D. C.

Re your two wires of the 26th. Following receipt of first wire notifying us of intended work stoppage by the BLF&E restraining order was issued by state court of Missouri against BLF&E. Terminal requests Mediation Board to retain jurisdiction on mediable items which are Item 4 on BLF&E strike ballot and footnote and mediation continue on their pro-

posed rule change and our counter proposal to be handled concurrently.

C. E. Breternitz, Vice Pres-Operation
Kansas City Terminal Railway Company

Petitioners did not reply until March 29, when they sent the following (Deft. Ex. 38, Tr. 167):

March 29, 1954

E. C. Thompson, Secy.,
National Mediation Board
Washington, D. C.

Procedure suggested your wire March 26, Kansas City Terminal Railway, acceptable to BLF&E but since carrier has obtained court restraining order against strike set for 6:00 PM March 29, 1954 same is being recessed in deference thereto.

H. E. GILBERT

On the same date the Board advised that the mediation proceeding was recessed (Deft. Ex. 37, Tr. 167).

## ARGUMENT.

The Kansas City Court of Appeals held (App. A., p. 1):

1. More than six months elapsed between the last denial of the time claims and the issuance of the injunction (p. 3).

2. Respondent invoked the services of the Mediation Board only with respect to the prospective rules changes (p. 4).

3. The Mediation Board had no power by statute to decide disputes over time claims, that power being vested by statute in the Adjustment Board (p. 8).

4. The threatened strike violated both the collective Bargaining Agreement and the Railway Labor Act (p. 15).

The Supreme Court of Missouri also held that the time claims dispute had not been submitted to the Mediation Board and that that Board had no power to decide such dispute (App. B., pp. 67-8).

The amended petition (App. B., p. 37) limited the relief sought to the prevention of a strike to enforce the payment of time claims for penalty pay and the injunction likewise limited its restraint to a strike to enforce these claims (Tr. 264-6).

The Norris-LaGuardia Act (29 U. S. C. 101) is not involved in this case.

This Court has repeatedly upheld injunctions to prevent the breach of a duty imposed by the Railway Labor Act (*Virginian Ry.* v. *System Federation et al.*, 300 U. S. 515, 57 S. Ct. 592; *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 65 S. Ct. 226). The Missouri and other state courts have repeatedly upheld injunctions to prevent a strike in breach of a contract (*Adams Dairy Co.* v. *Dairy Employees Union et al.*, 363 Mo. 182, 250 S. W. 2d 481; *Nokol Co.* v. *Becker*, 318 Mo. 292, 300 S. W. 1108; *Sheet Metal Workers Local 249* v. *Heating Co.*, (Ark.) 264 S. W. 2d 597; *Goldman* v. *Cohen*, 227 N. Y. S. 311; *Stephenson* v. *N. O.*, 180 Miss. 147, 177 So. 509; *Central of Georgia Ry.* v. *Culpepper*, 209 Ga. 844, 76 S. E. 2d 482). The legal basis of these cases is best stated by the Pennsylvania Supreme Court in *General Bldg. Contr. Ass'n* v. *Local Unions 542*, 370 Pa. 73, 87 A. 2d 250, 254:

> The subject matter of the instant action is a collective bargaining agreement and the power of the court invoked is the power to require adherence to such agreement, to prevent a breach thereof and to

prevent irreparable damage to a party to that contract * * *. No more is involved here than an action in equity to preserve the existence of a valid and subsisting contract and to compel parties there to recognize, adhere to and perform duties and obligations, contained therein. Evidence of irreparable damage threatened and imminent, together with the recognition of the contract by the Union and acceptance of the benefits of the contract, justifies intervention of a court of equity to preserve contractual rights and to enforce performance of the solemn duties assumed.

* * * * * * *

We can agree that federal labor legislation must be regarded as a single integrated program. It does not follow, however, that assertion of power over labor disputes and employe-employer relations deprived state courts of equity from exercising their traditional power to require performance of solemn contractual duties and, by injunctive relief, to prevent irreparable damage which would be brought about by failure to perform such duties.

* * * * * * *

Prevention of violation of obligations contained in a contract by injunctive relief is a power traditionally exercised by courts of this Commonwealth * * *. Enforcement of contracts may be required according to the usual processes of the law.

The decision below is therefore on an adequate non-federal ground, is clearly correct, is not in conflict with any decision of this Court, is in accord with the applicable decisions of this Court, and is decided the way this Court would probably decide it.

## I.

### The Decision Below Is on a Non-Federal Ground Adequate to Sustain It.

The court below put its decision on two grounds (1) a violation of the collective bargaining agreement and (2) a violation of the Railway Labor Act (45 U. S. C., § 151, *et seq.*, App. A., p. 15). The former is a non-federal ground; the latter is a federal ground. Where there are two grounds for the decision, one of which is a non-federal ground sufficient and adequate to sustain the decree (as we shall demonstrate), this Court will not review on certiorari, even though a federal question may also have been decided (*Fox Film Corp.* v. *Muller,* 296 U. S. 207, 56 S. Ct. 183).

The agreement between the parties provided that all time claims shall be barred unless within six months after the date of their final denial proceedings are instituted by the employees before a tribunal having jurisdiction pursuant to law (Pl. Ex. 1, Tr. 48, 55). The issue tried and decided was whether petitioners did so institute proceedings before such a tribunal within the meaning of the contract—*i. e.,* whether petitioners breached the contract.

Respondent claimed petitioners instituted no proceedings of any kind and the Adjustment Board was the only tribunal having jurisdiction pursuant to law. It was stipulated petitioners submitted none of these time claims to the Adjustment Board nor to any tribunal having jurisdiction pursuant to agreement of the parties (Tr. 53, 54).

Petitioners claimed proceedings were instituted (although admittedly *they* instituted none) before the Mediation Board which they claimed complied with the agreement.

Both Missouri courts held that petitioners had breached the contract.

This issue of the petitioners' breach of contract is clearly a non-federal ground. The question was the meaning of the words "proceedings instituted" and "tribunal" and "jurisdiction pursuant to law." While their meaning was to be determined, in part, by reference to the powers given the Adjustment Board and the Mediation Board by the Railway Labor Act (45 U. S. C. §§ 153, 155), the rights asserted by petitioners arose under and by virtue of the contract, not the Railway Labor Act. Petitioners claimed their strike was lawful because they had not breached the contract. Nothing in the Railway Labor Act confers upon petitioners the right to have the Mediation Board adjudicate disputes over time claims. Petitioners' rights, and the legality of their conduct, were measured by their compliance (or non-compliance) with the agreement.

The railway labor contract cases directly support this analysis. A railroad employee having seniority and other employment rights secured by a collective bargaining agreement sues the carrier, and sometimes his craft representative, for an alleged breach, claiming interference with or a denial of his seniority rights, etc. He purports to ground federal jurisdiction on an alleged federal question. Uniformly the courts have held that his rights arise under the contract, not the Railway Labor Act, even though the contract is negotiated and concluded under the provisions of that Act, and have denied jurisdiction on the federal question ground. *Starke* v. *N. Y. C. & St. L. R. Co.*, (7 Cir.) 180 F. 2d 569; *Barnhart* v. *Western Md. Ry.*, (4 Cir.) 128 F. 2d 709. See also *Blankenship* v. *Kurfman*, (7 Cir.) 96 F. 2d 450.

The "jurisdiction" of the Mediation Board is involved in this case only to the extent of determining whether

the words "tribunal having jurisdiction pursuant to law" in the agreement include the Mediation Board. That is not a federal question; that is a construction of contract question. Petitioners never claimed otherwise until their pending Petition for Certiorari. Nothing in their answer (App. B., p. 38) or after trial motion (Tr. 266) treats this question as anything other than a construction question. Their assignment of error in the state court was simply that the trial court erred in failing to find they had complied with the agreement because (App. B., p. 55) "the running of the six months limitation period was stayed by appropriate proceedings instituted within the period allowed by the * * * agreement."

Petitioners in their reply brief in the Missouri Supreme Court (pp. 14-15) said:

> * * * If the contracting parties had named the tribunals that they had in mind, there would probably be no construction of the contract required, and perhaps no argument to be decided.

The Missouri Supreme Court said of petitioners' contentions before it (App. B., pp. 62, 63, 69):

> Appellants say the appeal presents three questions for decision: * * * (2) whether the time claims denied on September 25, 1953, by plaintiff's "highest officer designated to handle claims and grievances," became barred on March 26, 1954, by reason of the six month contractual limitations provision in a collective agreement applicable to the employees (p. 62);
>
> * * * Appellants further insist * * * (2) *that the strike was not a breach of the contract* (p. 63).
>
> * * * the case requires a construction of the contract entered into between the parties * * * (p. 69) (Emphasis ours).

Even in their Application for Transfer (App. B., p. 74), petitioners were still contending the question was one "of proper construction of the agreement."

The court below was clearly right in holding that petitioners had instituted no proceedings before a tribunal having jurisdiction pursuant to law and that therefore they had unlawfully breached the agreement.

The burden of action was, by the contract, on petitioners. Time claims were barred within six months unless proceedings were instituted by them. They had two obligations: (1) to institute "proceedings," and (2) to institute such proceeding before a proper "tribunal." They did neither.

Petitioners stipulated (Tr. 53-4) that they instituted no proceedings before the Adjustment Board. The Mediation Board was not (as we shall demonstrate) a tribunal within the meaning of the contract, but Eschler, their chief witness, admitted they never even invoked the services of that Board (Tr. 236). Plaintiff's Exs. 6 and 50 (Tr. 58, 241) and Defendants' Ex. 33 (Tr. 166) corroborate this admission. Even on March 25 when the claims expired, Eschler simply threatened to strike unless *Terminal* agreed to put the time claims in mediation (Pl. Ex. 6, Tr. 58, 223, 236). The Supreme Court of Missouri properly found (App. B., p. 68):

> The dispute was never finally submitted to the National Mediation Board; * * * the parties refused to submit their differences to mediation * * *.

Even if we assume however petitioners did invoke the services of the Mediation Board, it could not be a "tribunal having jurisdiction pursuant to law" within the meaning of the contract. The construction of these words is a pure question of law.

Webster's New International Dictionary, Second Edition, defines "tribunal" as:

> * * * a person or body of persons having authority to hear and decide disputes so as to bind the disputants.

This Court has defined "jurisdiction":

> Jurisdiction is the power to decide the case either way, as the merits may require. *Erickson* v. *U. S.*, 264 U. S. 246, 44 S. Ct. 310.
>
> By jurisdiction, we mean power to entertain the suit, consider the merits and render a binding decision thereon. *General Inv. Co.* v. *N. Y. C. R. Co.*, 271 U. S. 228, 46 S. Ct. 496.

The Adjustment Board is the only tribunal having jurisdiction pursuant to law of these time claims. Section 3 First (i) of the Act (45 U. S. C. 153 First (i)) grants *exclusive* jurisdiction to the Adjustment Board over disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." *Slocum* v. *D. L. & W. R. Co.*, 339 U. S. 239, 70 S. Ct. 577; *O. R. C.* v. *Pitney*, 326 U. S. 561, 66 S. Ct. 322; *E. J. E. R. Co.* v. *Burley*, 325 U. S. 711, 65 S. Ct. 1282.

The Mediation Board is by statute denied the power to hear and decide the merits of time claims or grievances arising out of the disputed interpretation of rules in a collective bargaining agreement. Its jurisdiction is only to "use its best efforts, by mediation, to bring the [parties] to agreement" in disputes "*not referable to the National Railroad Adjustment Board.*" (Emphasis ours). (Section 5 First (b), 45 U. S. C. 155 First (b)). Jurisdiction of this limited scope obtains whether a party invokes the services or the Board proffers the services. In either event, it has no "jurisdiction" *by law* to decide anything.

In *E. J. E.* v. *Burley, supra,* this court said of a mediable dispute, p. 725:

> No authority is empowered to decide the dispute and *no such power is intended,* unless the parties themselves agree to arbitration. (Emphasis ours.)
>
> * * * To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.
>
> The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with "jurisdiction" to determine grievances and make awards concerning them. * * *

The court below properly held that the strike to enforce the payment of the time claims after the expiration of the six months period breached the contract. It properly construed the agreement to mean that, by agreeing to institute proceedings before a tribunal having jurisdiction pursuant to law, petitioners impliedly agreed not to enforce their claims in any other manner and, having failed to so enforce their claims, they could not compel their payment by a strike. Missouri law is clear that the law will imply a promise to refrain from doing something contrary to that which is expressly promised. *Froedtert Grain Co.* v. *Mfg. Co.,* (E. D. Mo.) 110 F. Supp. 757; *Williams* v. *Patterson,* 240 Mo. App. 131, 218 S. W. 2d 156.

The only "authority" cited by petitioners in this Court or in the state courts that a strike ballot followed by meditation constituted the institution of proceedings before a tribunal having jurisdiction pursuant to law was witness Loomis (Pet., pp. 8-9). His testimony was properly ignored by the state courts because he was expressing solely

his own conclusions of law. It was of doubtful relevancy (Tr. 194) and of no weight. Over respondent's objections (Tr. 183, 192, 194, 195, 209), he purported to testify to his *own* interpretation in February, 1950 (Tr. 187, 191, 192, 195-7, 199, 201-205) of a different rule in a national agreement (Pl. Ex. 8, Tr. 60). His personal opinion changed between February and May, 1950 (Tr. 211, 213, 214). The rule in the national B. L. F. & E. agreement was actually written by Dr. Steelman, not negotiated by the parties (Tr. 186, 189). But even accepting at face value his own opinion on a question of law in February, 1950, he did *not* say, as petitioners claim, that *this* time limit rule in *this* Terminal B. L. F. & E. contract meant what petitioners say he said it meant. He said he thought the national ORC and BRT rule meant that the taking of a strike ballot followed by mediation would be the institution of proceedings (Tr. 191-209).

But that rule was very different from the national B. L. F. & E. rule. It omitted the phrase "before a tribunal having jurisdiction pursuant to law" and required only that the employee institute proceedings without designating the tribunal. Loomis explained that the reason why the Conductors and Trainmen would not agree to the additional language was (Tr. 201) that "the organizations feared that that was committing them absolutely to the use of the Adjustment Board or of arbitration." (See also Tr. 192, 205). This is precisely the legal effect of the additional language used in the national B. L. F. & E. agreement. Obviously, there is a vast difference in meaning between the language of the two rules. Loomis' opinion in February, 1950, that a strike ballot followed by a request of the Union for mediation constituted the institution of proceedings may or may not be sound. But that procedure is certainly not the institution of proceedings before

a tribunal having jurisdiction pursuant to law, and even Loomis did not have this opinion, when the Act plainly gives jurisdiction to hear and decide time claims to the Adjustment Board only. Loomis' February, 1950, opinion on the meaning of the Conductors' and Trainmen's rule is therefore immaterial on the question of the meaning of a different rule in the B. L. F. & E. agreement. He admitted that he recalled no discussion between the carriers and B. L. F. & E. whether or not the procedure of a strike ballot followed by a Union request for mediation was the institution of proceedings before a tribunal having jurisdiction pursuant to law (Tr. 187, 205).

But even the law of Loomis requires that the Union invoke the mediation (Tr. 196-7).

The futility of using Loomis as an authority is emphasized by his complete reversal of opinion. He himself pinpointed the ethereal character of his own testimony (Tr. 188):

> Q. Then a tribunal established by law would be established by law regardless of anything you wrote into the agreement, isn't that so?
>
> A. That is correct.

The undisputed facts in this case belie the claims in the Petition that the strike ballot "led to" or "resulted in" (pp. 9-10) a proffer of services by the Mediation Board or that that Board ever "assumed jurisdiction" (or attempted to) (pp. 16, 17, 18) or that Terminal "thwarted" any "responsibility" of the Mediation Board (pp. 9, 18) or that there was ever any "labor emergency." (pp. 10, 16).

On April 26, 1953, a new overtime rule was negotiated between the parties. Beginning on June 26, petitioners began filing claims for penalty pay. Terminal and Union disagreed on the fundamental interpretation of the over-

time rule. All the claims were investigated and denied on their merits. In August and during that fall, Terminal and Union representatives conferred on the property but their basic positions remained unchanged. On December 21, the Union served a thirty day notice to negotiate a change in the overtime and many other working rules. On January 19, 1954, representatives of both parties formally conferred on the proposed rules changes and Terminal served counter proposals. On February 3, the Union took a strike vote on all the rules changes and on claims for penalty pay. Because a strike at that time over rules changes was lawful, Terminal asked for mediation on the rules changes only. After correspondence with the Union in which the Mediation Board made it very plain it understood the mediation was only on the rules changes, the Board docketed the case on the rules changes dispute only. The mediator appeared on the property on March 23. Petitioners refused to mediate the rules changes dispute unless the time claims were also settled in mediation. Terminal refused to mediate the time claims. There was nothing to mediate; the parties disagreed in their basic interpretation of the overtime rule; the claims were ripe for adjudication. Previously Terminal had offered and again it offered, to submit the claims to the National Adjustment Board or to a supplemental board. Petitioners refused both. Eschler knew that the claims became outlawed on March 25. Nevertheless, the Union notified the Mediation Board on March 26 it would strike on March 29. Terminal received this notice at 12:30 p. m., together with a request for a statement. It immediately filed its petition for injunction and secured and served a restraining order upon the principal defendants by 3:30 p. m. Not until 4:30 p. m. was it requested by the Mediation Board to "enter into conferences" with the Union on the time claims. It advised the Board it had secured the restrain-

ing order and the Board promptly recessed the rules changes case.

There was thus never any "proffer of services" by the Mediation Board nor any attempt by it to assume "jurisdiction" of the claims for decision. It took no action to prevent the strike. All it ever asked the parties to do was to confer—and this only *after* the suit was filed and the restraining order served. No emergency existed at that time because it had been eliminated by the restraining order. Whatever "responsibility" the Board had was discharged by its request for statements (for that is all it did when it learned of the strike) and that afforded the public scant protection from a paralyzing strike in interstate transportation in the Missouri valley. Terminal "thwarted" nothing. Its position had been known to petitioners since August, 1953. They even say they knew Terminal would try to get an injunction if they struck (Tr. 223). They were not misled nor prejudiced.

The Mediation Board had no "responsibility" to decide time claims. This injunction is not against the Board and does nothing but restrain defendants from an unlawful strike.

Petitioners claim (pp. 3, 14-18) that the Union has the mandatory right under the Railway Labor Act to a compulsory settlement by the Mediation Board of outlawed claims for penalty pay. Merely because, they say, time claims are include in a strike ballot along with prospective rules changes, the Union thereby can require the compulsory mediation of the time claims, even though the Union does not invoke the services of the Mediation Board and the carrier does not consent to the mediation. There is no merit in such a position.

The Mediation Board has no power to adjudicate any time claims, barred or otherwise (45 U. S. C., § 155 First) and this Court has said, as Congress has said, that even the settlement of "major disputes" is "the traditional *voluntary* processes of negotiation, mediation, *voluntary* arbitration, and conciliation." (*E. J. E. R. Co.* v. *Burley, supra,* 325 U. S. at 725) (Emphasis ours). There can be no statutory right given petitioners to *compel* respondent involuntarily to settle these outlawed claims. Petitioners so agreed below, as the Supreme Court of Missouri pointed out (App. B., p. 67):

> Appellants [petitioners] admit that the National Mediation Board "has no authority to force settlement, but rather proceeds by attempting to persuade the parties to reach a voluntary agreement." (Insert ours).

And Eschler said the same thing:

> Q. Now, the Mediation Board has no such power * * * [to hear and decide the merits of time claims] * * * unless it is conferred by the agreement of the parties? (Insert ours).
>
> A. That is correct (Tr. 230-1).
>
> * * *
>
> A. The Mediation Board has no jurisdiction or authority to make either party discuss anything if they refuse (Tr. 235).

For all the foregoing reasons, it is apparent the decision below is on an adequate non-federal ground and is correctly decided. Petitioners claim no rights under Section 5 First of the Railway Labor Act denied below.

## II.

### The Decision Below That the Railway Labor Act Prohibits This Strike to Enforce the Payment of These Time Claims Is in Accord with the Applicable Decisions of This Court.

These time claims were barred by the agreement and, therefore, they constituted illegal demands. The Missouri court's injunction to prevent the strike to collect these stale claims is precisely in accord with the holding of this Court in *Dorchy* v. *Kansas*, 272 U. S. 306, 47 S. Ct. 86. There a strike had been called by a labor union to enforce payment of a disputed monetary claim of a former employee. In holding that the strike was unlawful, Justice Brandeis said (p. 311):

> * * * the right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. *To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court.* * * * *To enforce payment by a strike is clearly coercion.* * * * *Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike* (Emphasis ours).

There is nothing in the Railway Labor Act legalizing such a strike. The language of the Act itself and the opinions of this Court construing it demonstrate conclusively that the National Railroad Adjustment Board was established by Congress with exclusive jurisdiction to determine

the merits of time claims and make a final award binding upon both parties (45 U. S. C. 153 (i) (j) (k) (m)).

The general purpose of Congress in passing the Act was commented upon by this Court in *Texas & N. O. R. Co.* v. *Railway Clerks,* 281 U. S. 548, 565, 50 S. Ct. 427:

> The Brotherhood insists, and we think rightly, that the major purpose of Congress in passing the Railway Labor Act was "to provide a machinery to prevent strikes."

and again in *Slocum* v. *D. L. & W.,* 339 U. S. 239, 70 S. Ct. 577, when it said (p. 242):

> The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes.

In *E. J. E. R. Co.* v. *Burley,* 325 U. S. 711, 65 S. Ct. 1282, this Court (pp. 725-8) discussed the 1934 amendments to the Act. It there pointed out that under the 1926 Act there had been a complete breakdown in the machinery for the settlement of grievances, that the old Mediation Board had been helpless, and that it was to get rid of the large backlog of accumulated grievances, and, at the same time, to get the grievances out of the way of the settling of major disputes, that "the Adjustment Board was created and given power to decide them [grievances]." (Insert ours). It also noted that the aim of Congress in creating the Adjustment Board was to "add decision where agreement fails."

In *Slocum* v. *D. L. & W. R. Co., supra,* and *O. R. C.* v. *Pitney,* 326 U. S. 561, 66 S. Ct. 322, this Court also discussed the purpose for which the Adjustment Board was created, its composition, and its peculiar ability to understand and adjust the problems involved in grievances arising out of the interpretation of working rules in collective bargaining

agreements. It held that Board had jurisdiction over such disputes to the exclusion of the jurisdiction of any court. We cannot believe that this Court meant to hold that where no court has the right to determine the merits of time claims or to enforce the payment thereof, that one party is free to make its own unilateral interpretation and then enforce its determination by a strike.

It is apparent, therefore, that the construction placed upon the Railway Labor Act, by the Kansas City Court of Appeals is not only in harmony with, but is compelled by, the language of the Act and the decisions of this Court. If there is a federal question of substance presented by the opinion below, it has been correctly decided.

Petitioners try to make it appear (pp. 2, 11-13) that the issue in this case is whether the employees have the right to strike to enforce the collective bargaining processes—the "major disputes"—under the Railway Labor Act. There is no such issue. The real issue is much more limited. It is whether these petitioners have the right to strike to enforce the payment of these time claims. There is no collective bargaining or "major dispute" involved.

Petitioners assume Terminal's violation of the agreement by its "wrongful interpretations and application" (p. 2). This is the issue respondent has always contended must be submitted to the National Railroad Adjustment Board (or a Special Adjustment Board) for determination. Respondent does not concede that petitioners have the sole right to interpret the agreement.

Petitioners' treatment of the *Burley* case (p. 11) is indicative of their handling of the evidence. By lifting sentences out of context, they have this Court saying that "disputes over grievances" are "disputes over the formation of collective agreements." Then, they follow with

the statement that this case "fits the category of a 'major dispute.'" (p. 11).

Again, petitioners misstate the issue. This Court knows that "minor disputes" in the railroad industry are disputes over grievances and that time claims are grievances (*E. J. E. R. Co.* v. *Burley, supra*).

The undisputed evidence demonstrates that the reason for the calling of this strike was to enforce the time claims —and nothing else.

1. In its amended petition, Terminal prayed the court, "to issue its permanent injunction * * * enjoining and restraining defendants * * * from attempting to enforce the payment of the aforesaid time claims by [striking] * * *." (App. B., p. 37).

2. The answer admits "* * * defendants did authorize a strike on account of certain time claims and other matters * * *." (What the "other matters" are is not disclosed.) (App. B., pp. 39-40.)

3. Counsel for petitioners in his opening statement did not contend otherwise. He said:

> Now, under the contract between the Terminal and its employees, represented by the Brotherhood of Locomotive Firemen and Enginemen, certain disputes arose over the application of the overtime rule and other rules. The overtime rule is by far the largest part of the violation, which is proclaimed by the employees. There were some other rules. The procedure provided by the contract was followed. The claims were presented to the various officers of the carrier. There were two stages of that, and then, *a group of them was finally declined by this officer.*
>
> At that point, the representatives of the employees, * * * *spread a strike ballot.* * * * At the time the services [of the Mediation Board] were invoked

*there were two outstanding disputes.* One was that the employees wanted a modification in certain terms of the contract. * * * Part of the dispute related to certain changes, which had been proposed by the union, at the same time a counter-proposal was submitted by the carrier, in which it wanted to change certain of the rules. In addition to that, *the strike ballot covered the time claims.* The membership were informed that a large number of time claims had accumulated and efforts to adjust them with the carrier had been unsatisfactory, and were asked whether it was desired to call a strike in order to assist in enforcing the time claims. * * * (Tr. 37-39).

* * * I will say frankly, we don't know of any decision that is exactly in point with this case the other way, but we think there is an absolute dearth of authority that the recourse to the Adjustment Board is the exclusive remedy of a union, and *that a strike in order to enforce time claims is an unlawful strike* (Tr. 44) (Emphasis ours).

4. Petitioners' General Chairman Manion testified (Tr. 62):

Q. And what were you striking over?

A. All matters in the time claims.

5. Petitioners' Vice-President Eschler testified (Tr. 222):

* * * I advised the Mediator that unless the time claims were also included in the mediation conferences that I would suggest to the International President the advisability of setting a strike date. * * *

6. President Gilbert in his telegram to Manion March 15 (Pl. Ex. 50, Tr. 241) said:

* * * Please keep this office advised of expiration of time limit on your claims so that if necessary we can set strike date to force *status quo* on time claims *as*

*well as mediable matters* referred to by Mediation Board (Emphasis ours).

7. Eschler in his telegram to Gilbert of March 25, 1954 (Pl. Ex. 6, Tr. 56, 58) said:

> * * * One hundred time claims expired under Section 17 today. Therefore, the Committee and I request your approval to setting a strike date for 6 PM March 29 on the docket of cases only, continuing mediation conferences on rule changes * * *.

8. Petitioners in their brief filed in the Missouri Supreme Court said (pp. 1-2).

> The amount in dispute exceeds $7,500. Plaintiff seeks an injunction against the defendants' attempts to enforce $54,000 worth of time claims. If plaintiff is successful, then the record shows that there would be no possible remedy still available to defendants as to at least $17,000 worth of claims.

The Supreme Court of Missouri quoted petitioners' contention (App B., p. 65):

> * * * that "the suit seeks to enjoin defendants individually from striking in order to attempt to obtain an adjustment of the claims in issue"; that "the whole reason for this suit is that the appellants claim that respondent owes them money for breach of contract"; and that "the question here is how appellants may seek enforcement of their claims."

Petitioners' statement, therefore, on page 13 that "the instant case has been in the collective bargaining stage" is hardly true. The negotiations over the rules changes are in that stage, but rule changes are not involved in this case—and, of course, could not be. But the strike to enforce time claims is not collective bargaining.

Petitioners in their foot notes on pages 12 and 13 argue that they should not be compelled to take their

claims to the Adjustment Board because the docket is congested and there might be a delay. Such argument ignores the evidence that Terminal on at least three occasions offered to agree to a Special Board of Adjustment and petitioners, at all times, refused. Aside from this, how can Terminal's rights under the agreement and the Act and the public interest be prejudiced by the crowded docket of the Adjustment Board? Many cities have trial court dockets that are so congested that it takes years to get a civil lawsuit to trial, but has it ever been said that this gives an individual the right to collect an alleged debt by force?

Petitioners state (p. 14) that the decision below holds that the right to strike has been taken from the employees of the railroad industry. This is not true. The injunction preventing the attempt to enforce the payment of these admittedly barred time claims does not take away the right to strike, or interfere with the collective bargaining processes or the customary functions of the Mediation Board.

## CONCLUSION.

This case involves only a contract between petitioners and respondent. Its construction by the Missouri court is clearly in accord with established law. We respectfully submit that the petition for writ of certiorari should be denied.

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Office - Supreme Court, U.S.
FILED
FEB 25 1957
JOHN T. FEY, Clerk

# In the Supreme Court of the United States

**OCTOBER TERM, 1956.**

**No. 702.**

KEITH L. MANION, *et al.*,

*Petitioners,*

vs.

KANSAS CITY TERMINAL RAILWAY COMPANY,
a corporation,

*Respondent.*

## REPLY BRIEF OF PETITIONERS.

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## REPLY BRIEF OF PETITIONERS.

### FOREWORD.

Though we are tempted to respond to all of the assertions of fact and law set forth in Respondent's brief, we will limit ourselves in this reply to the jurisdictional point raised in the brief in opposition, to-wit, the claim that the decision of the court below rests on adequate, non-federal grounds. This assertion of Respondent will not withstand analysis.

On the merits we again refer the Court to our petition. None of the authorities cited by Respondent gives the least support to its contentions, which depend on the startling proposition that the Railway Labor Act outlaws certain strikes *by implication,* in addition to expressly limiting this right in other respects not here involved.

**POINT I. Since the Contract Clause Relied on by Respondent and Construed by the Court Makes Express Reference to "a Tribunal Having Jurisdiction Pursuant to Law, * * *" a Proper Decision on the Contract Question Requires an Interpretation of the Railway Labor Act and Is Therefore a Question of Federal Law.**

The proper test for determining the presence of a federal question was expressed by the elder Mr. Justice Harlan in *New Orleans, Mobile and Texas R. R. Co. v. Mississippi*, 102 U. S. 135, l. c. 140:

> "* * * a case in law or equity * * * may, properly, be said to arise under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either * * *."

In order to prevent the running of the limitation period on claims, it was necessary that they be progressed before a tribunal having jurisdiction pursuant to *law*. The only law establishing tribunals having jurisdiction over railway labor disputes is the federal law—the Railway Labor Act. In determining whether there has been compliance with the contract provision, a state court would have to construe and apply the federal statute. If such a court takes an erroneous view of the statute, its decision will necessarily be in error. The case therefore meets the test set out above, for presence of a federal question.

This whole area is extensively regulated by federal statutes. It is not surprising that the parties to the national agreements, the language of which was used in this agreement, saw fit to refer to the federal law in their contract. The thought that each state court which has this contract language before it can reach its own conclusion as to the meaning of the federal statute, but that such

views cannot be reviewed and harmonized by this Court, carries, in its very statement, its own refutation.

The Kansas City Court of Appeals construed the Railway Labor Act and the authority of the National Mediation Board, and held that the Mediation Board had jurisdiction only over disputes involving rule changes (Appendix of Pet. p. 8). As is shown in the petition, this conclusion flies in the teeth of the language of the statute, 45 U. S. C., Sec. 155, First (b), and is in conflict with the established practices of the Mediation Board, as disclosed by its annual report to Congress. If that court were correctly instructed as to the meaning of the Railway Labor Act, its decision would be different.

The cases cited on page 14 of the opposing brief merely hold that a question of law arising under a railway collective bargaining agreement is not *necessarily* a federal question. These cases involved discharge and seniority questions—matters about which the Railway Labor Act leaves the parties free to adopt whatever rules they desire. No construction of the act was required for a proper decision of these cases.

At all stages of this case Petitioners have contended that the National Mediation Board had jurisdiction in the premises (Appendix of Pet., pp. 41, 55, 61, 72). The court below disagrees with this contention. Whether that court is right or not is wholly a matter of federal law, and the point is of controlling importance in the case.

**POINT II. At All Stages of This Case Petitioners Have Contended That Respondent Was Required to Exhaust Its Administrative Remedies Before Seeking Judicial Relief Against the Strike. This Claim Presents a Federal Question Which Must Be Decided Before a Court Can Reach the Merits of the Case.**

The contract question, which Respondent advances as a non-federal ground, is a point which goes to the merits of the case. If our contention that Respondent had a duty of exhausting the remedies prescribed by the Railway Labor Act to prevent strikes, before seeking judicial relief, is sound, then the court below should never have reached the merits. Any decision on the merits, then, would not be adequate to support the judgment as against this contention.

As the decision now stands, a carrier can ignore the machinery provided by the Railway Labor Act for minimizing disputes, and can go immediately to the state courts. Surely Congress did not provide this administrative machinery for the sole benefit of employers—to be used by them or not, as they see fit. The failure of the court below to apply the requirement of exhaustion of Federal administrative remedies appears to be the plainest of errors.

A question of the availability of judicial remedies in railway labor cases is manifestly a federal question. *Slocum v. D. L. and W. R. Co.*, 339 U. S. 239; *General Committee v. M. K. T. Ry.*, 320 U. S. 323.

Respectfully submitted,

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No. 702. MANION ET AL. *v.* KANSAS CITY TERMINAL RAILWAY CO. On petition for writ of certiorari to the Kansas City Court of Appeals of Missouri. *Per Curiam:* The petition for writ of certiorari is granted. The judgment of the Kansas City Court of Appeals of Missouri must be vacated in the light of our decision in *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U. S. 30, because the dispute here is not pending before the National Railroad Adjustment Board. The cause is remanded for further proceedings not inconsistent with this decision and without prejudice to the power of the Court of Appeals to reinstate its judgment if the dispute is submitted to the Adjustment Board by either party within a reasonable time. *Ralph M. Jones, Charles B. Blackmar, Russell B. Day* and *Harold C. Heiss* for petitioners. *Horace F. Blackwell, Jr.* for respondent. Reported below: 297 S. W. 2d 31.